Judicial Cases
concerning
American Slavery and the Negro

EDITED BY
HELEN TUNNICLIFF CATTERALL
(MRS. RALPH C. H. CATTERALL)

VOLUME II

Cases from the Courts of
North Carolina, South Carolina, and Tennessee

WASHINGTON, D. C.
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PAPERS OF THE DEPARTMENT OF HISTORICAL RESEARCH
J. FRANKLIN JAMESON, EDITOR

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PREFACE.

In this second volume Mrs. Catterall presents the material, appropriate to her purpose, to be found in the judicial reports of North Carolina, South Carolina, and Tennessee. The first volume embraced the English cases and those decided in the courts of Virginia, West Virginia, and Kentucky. The preface to the first volume sufficiently explains, it is believed, the purpose of these volumes, their relation to the furtherance of work in American history, the principles observed in the selection of the material, and the methods followed in its presentation. It may however be well to make the additional explanation that although the work of compilation has in the judicial reports of each state been carried to the end of 1875, it includes only cases which contain facts or events of earlier date than 1866, the period on whose history it seeks to cast light being that which was terminated by the abolition of slavery.

J. Franklin Jameson.

Washington, D. C., May 16, 1928.

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LIST OF ABBREVIATIONS.

Bailey = Henry Bailey, *Reports of Cases argued and determined in the Court of Appeals of South Carolina, on Appeal from the Courts of Law.*

Bailey Eq. = Henry Bailey, *Reports of Cases in Equity argued and determined in the Court of Appeals of South Carolina.*

Baxter = Jere Baxter, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Bay = Elihu H. Bay, *Reports of Cases argued and determined in the Superior Courts of Law in the State of South-Carolina, since the Revolution.*

Bee = Thomas Bee, *Reports of Cases adjudged in the District Court of South Carolina.*

Betts' Scr. Bk. = *Betts' Scrap Book* (Cases in the U. S. Circuit and District Courts for the Southern District of New York, from 1839 to 1862, with a few cases from the other districts. Collected by Samuel R. Betts).

Blatchford = Samuel Blatchford, *Reports of Cases argued and determined in the Circuit Court of the United States for the Second Circuit.*

B. Mon. = Ben. Monroe, *Reports of Cases at Common Law and in Equity, decided in the Court of Appeals of Kentucky.*

Brevard = Joseph Brevard, *Reports of Judicial Decisions in the State of South Carolina.*

Brev. Dig. = Joseph Brevard, *Alphabetical Digest of the Public Statute Law of South-Carolina.*

Brun. Col. Cas. = Albert Brunner, *Reports of Cases argued and determined in the Circuit Courts of the United States.*

Busbee = Perrin Busbee, *Reports of Cases at Law argued and determined in the Supreme Court of North Carolina.*

Busb. Eq. = Perrin Busbee, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

Cam. and Nor. = Duncan Cameron and William Norwood, *Reports of Cases ruled and determined by the Court of Conference of North Carolina.*

Car. and Nich. = Robert L. Caruthers and Alfred O. P. Nicholson, *Compilation of the Statutes of Tennessee of a General and Permanent Nature.*

Car. L. R. = *Carolina Law Repository.*

Cheves = Langdon Cheves, jr., *Cases at Law, argued and determined in the Court of Appeals of South Carolina.*

Cheves Eq. = Langdon Cheves, jr., *Cases in Chancery argued and determined in the Court of Appeals of South Carolina from November, 1839, to May, 1840.*

City Laws = *Digest of the Ordinances of the City Council of Charleston, from the Year 1783 to July, 1818.*

Code = *Code of Tennessee, enacted by the General Assembly of 1857-1858.*

Col. Rec. = *The Colonial Records of North Carolina.*

Coldwell = Thomas H. Coldwell, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Cooke = William W. Cooke, *Reports of Cases argued and adjudged in the Supreme Court of Errors and Appeals of Tennessee, and in the Federal Court for the District of West Tennessee.*

Counc. Journ. = *Journal of the Grand Council of South Carolina,* ed. A. S. Salley.

Cranch = William Cranch, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Ct. Cl. = *Cases decided in the Court of Claims of the United States.*

Desaussure = Henry W. Desaussure, *Reports of Cases argued and determined in the Court of Chauncery of the State of South Carolina.*

Devereux = Thomas P. Devereux, *Cases argued and determined in the Supreme Court of North-Carolina.*

Dev. Eq. = Thomas P. Devereux, *Equity Cases argued and determined in the Supreme Court of North Carolina.*

Dev. and Bat. = Thomas P. Devereux and William H. Battle, *Reports of Cases at Law argued and determined in the Supreme Court of North Carolina.*

Dev. and Bat. Eq. = Thomas P. Devereux and William H. Battle, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

Dudley = C. W. Dudley, *Reports of Cases at Law argued and determined in the Court of Appeals of South Carolina.*

Dud. Eq. = C. W. Dudley, *Reports of Cases argued and determined in the Court of Appeals of South Carolina, on appeal from the Courts of Equity.*

Faust = *Acts of the General Assembly of the State of South Carolina from February, 1791 [to December, 1804], both inclusive.* Printed by D. and J. J. Faust.

Fed. Cas. = *The Federal Cases, comprising Cases argued and determined in the Circuit and District Courts of the United States, to 1880.*

Grattan = Peachy R. Grattan, *Reports of Cases decided in the Supreme Court of Appeals of Virginia.*

Grimke's Public Laws = John F. Grimke, *Public Laws of South-Carolina, to 1790, inclusive.*

Hagg. Adm. = John Haggard, *Reports of Cases argued and determined in the High Court of Admiralty.*

Harper = William Harper, *Reports of Cases determined in the Constitutional Court of South-Carolina.*

Harper Eq. = William Harper, *Reports of Equity Cases determined in the Court of Appeals of the State of South Carolina.*

Hawks = Francis L. Hawks, *Reports of Cases argued and adjudged in the Supreme Court of North Carolina.*

Haywood [1 and 2] = John Haywood, *Reports of Cases adjudged in the Supreme Courts of Law and Equity of the State of North-Carolina.*

Haywood [3, 4, and 5] = John Haywood, *Reports of Cases argued and adjudged in the Court of Errors and Appeals of the State of Tennessee.*

Hayw. and Cobbs = John Haywood and Robert L. Cobbs, *The Statute Laws of the State of Tennessee, of a Public and General Nature* (1831).

Head = John W. Head, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Heiskell = Joseph B. Heiskell, *Reports of Cases argued and determined in the Supreme Court of Tennessee for the Eastern Division.*

Hening = William W. Hening, *The Statutes at Large of Virginia.*

Hill = W. R. Hill, *Reports of Cases at Law argued and determined in the Court of Appeals of South Carolina.*

Hill Eq. = W. R. Hill, *Reports of Cases in Chancery argued and determined in the Court of Appeals of South Carolina.*

Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

How. Miss. = Volney E. Howard, *Reports of Cases argued and determined in the High Court of Errors and Appeals of the State of Mississippi.*

Hughes = Robert M. Hughes, *Reports of Cases decided in the Courts of the Fourth Judicial Circuit sitting in Admiralty.*

Humphreys = West H. Humphreys, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Iredell = James Iredell, *Reports of Cases at Law argued and determined in the Supreme Court of North Carolina.*

Ired. Eq. = James Iredell, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

Iredell's Rev. = James Iredell, *Laws of the State of North Carolina* (1791).

Ired. Rev. Code = *Laws of the State of North Carolina, including the Titles of such Statutes and Parts of Statutes of Great Britain as are in Force in said State. . . .* (Compiled by Henry Potter, J. L. Taylor, and Bartlet Yancey, 1821.)

Johns. (N. Y.) = William Johnson, *Reports of Cases argued and determined in the Supreme Court of Judicature and in the Court for the Trial of Impeachments and the Correction of Errors in the State of New York.*

Jones = Hamilton C. Jones, *Reports of Cases at Law argued and determined in the Supreme Court of North-Carolina.*

Jones Eq. = Hamilton C. Jones, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

Law Rep. = *Monthly Law Reporter.*

Lofft = Capell Lofft, *Reports of Cases adjudged in the Court of King's Bench.*

McCord = D. J. McCord, *Reports of Cases determined in the Constitutional Court of South-Carolina.*

McCord Eq. = D. J. McCord, *Chancery Cases argued and determined in the Court of Appeals of South Carolina.*

McMullan = J. J. McMullan, *Reports of Cases at Law argued and determined in the Court of Appeals and Court of Errors of South Carolina.*

McMul. Eq. = *Equity Cases determined in the Court of Appeals of South Carolina.*

Martin N. C. = François X. Martin, *Notes of a Few Decisions in the Superior Courts of the State of North Carolina, and in the Circuit Court of the United States for the District of North Carolina.*

Mart. and Yerg. = John H. Martin and George S. Yerger, *Reports of Cases determined in the Supreme Court of Tennessee.*

Meigs = Return J. Meigs, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Mill = John Mill, *Reports of Judicial Decisions in the Constitutional Court of South Carolina.*

Miss. Rev. Code = *The Revised Code of the Statute Laws of the State of Mississippi* (1857).

Morehead and Brown's Digest = Charles S. Morehead and Mason Brown, *Digest of the Statute Laws of Kentucky.*

Murphey = A. D. Murphey, *Reports of Cases argued and adjudged in the Supreme Court of North Carolina.*

N. and McC. = Henry J. Nott and David J. McCord, *Reports of Cases determined in the Constitutional Court of South-Carolina.*

N. B. R. = *National Bankruptcy Register Reports.*

N. C. = *North Carolina Reports.*

N. C. Term Rep. = *North Carolina Term Reports.*

Nicholson's St. L. = A. O. P. Nicholson, *Statute Laws of the State of Tennessee, of a General Character.*

Niles Reg. = *Niles' Weekly Register.*

Overton = John Overton, *Tennessee Reports, or Cases ruled and adjudged in the Superior Courts of Law and Equity and Federal Courts for the State of Tennessee.*

Peck = Jacob Peck, *Reports of Cases argued and adjudged in the Supreme Court of Errors and Appeals of the State of Tennessee.*

Peters = Richard Peters, jr., *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Phillips = S. F. Phillips, *Cases at Law argued and determined in the Supreme Court of North Carolina.*

Phil. Eq. = S. F. Phillips, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

P. L. = *Public Laws of South-Carolina* (Grimké).

Rev. Code (N. C.) = *Revised Code of North Carolina, enacted by the General Assembly of 1854* (B. F. Moore and Asa Biggs).

Rev. Code (Tenn.) = *A Compilation of the Statute Laws of the State of Tennessee. Of a General and Permanent Nature, compiled on the Basis of the Code of Tennessee, with Notes and References, including Acts of Session of 1870-1871* (Seymour D. Thompson and Thomas M. Steger).

Rev. St. = *The Revised Statutes of the State of North Carolina, passed by the General Assembly of 1836-1837* (James Iredell and William H. Battle).

Rice = William Rice, *Reports of Cases at Law argued and determined in the Court of Appeals and Court of Errors of South-Carolina.*

Rice Eq. = William Rice, *Reports of Cases in Chancery argued and determined in the Court of Appeals and Court of Errors of South-Carolina.*

Richardson = J. S. G. Richardson, *Reports of Cases at Law argued and determined in the Court of Appeals and Court of Errors of South Carolina.*

Rich. Eq. = J. S. G. Richardson, *Reports of Cases in Equity argued and determined in the Court of Appeals in Equity and Court of Errors of South Carolina.*

Rich. Eq. Cas. = J. S. G. Richardson, *Reports of Cases in Chancery argued and determined in the Court of Appeals of South-Carolina.*

Riley = W. Riley, *Report of Law Cases determined in the Court of Appeals of South Carolina.*

Riley Eq. = W. Riley, *Chancery Cases determined in the Court of Appeals of South-Carolina.*

S. C. = *Reports of Cases heard and determined in the Supreme Court of South Carolina.*

Scott's Rev. = Edward Scott, *Laws of the State of Tennessee, including those of North Carolina now in force in this State, from the Year 1715 to the Year 1820, inclusive.*

Sneed = John L. T. Sneed, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Speers = R. H. Speers (or Spears—Spears in vol. I., Speers in vol. II. and the equity volume), *Cases at Law argued and determined in the Court of Appeals of South Carolina.*

Speers Eq. = R. H. Speers, *Equity Cases argued and determined in the Court of Appeals of South Carolina.*

St. at L. = *Statutes at Large of the United States.*

St. at L. of S. C. = *The Statutes at Large of South Carolina.*

Statutes of Ohio = *Statutes of the State of Ohio, of a General Nature* (1841).

Strobhart = James A. Strobhart, *Reports of Cases argued and determined in the Court of Appeals and Court of Errors of South Carolina on Appeal from the Courts of Law.*

Strob. Eq. = James A. Strobhart, *Reports of Cases in Equity argued and determined in the Court of Appeals and in the Court of Errors of South Carolina.*

Swan = William G. Swan, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

Taylor = John L. Taylor, *Cases determined in the Superior Courts of Law and Equity of the State of North-Carolina.*

Tay. Rev. = John L. Taylor, *A Revisal of the Laws of the State of North-Carolina.*

Tenn. Cas. = *Tennessee Cases, with Notes and Annotations, argued and determined in the Supreme Court of Tennessee, not heretofore reported, 1847-1894* (Robert T. Shannon, 1898-1899).

Tenn. Ch. = *Tennessee Chancery Reports* (William F. Cooper).

Thomp. Cas. = Seymour D. Thompson, *Unreported Tennessee Cases* [1847-1869].

Treadway = W. R. H. Treadway, *Reports of Judicial Decisions in the Constitutional Court of the State of South Carolina.*

Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*

Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Winston = P. H. Winston, *Cases at Law argued and determined in the Supreme Court of North Carolina.*

Winst. Eq. = P. H. Winston, *Cases in Equity argued and determined in the Supreme Court of North Carolina.*

Yerger = George S. Yerger, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

JUDICIAL CASES CONCERNING SLAVERY.

NORTH CAROLINA.

INTRODUCTION.

I.

The humanity shown the slave by the laws and courts of North Carolina has been extolled, in court and out,[1] and justly. Chief Justice Taylor observes, in 1821, in State *v.* Ben,[2] "that every time the Legislature have touched this subject since the revolution, it has been for the purpose of improving the condition of slaves." But this very case is a curious example of how "the best laid schemes o' . . men gang aft a-gley." The legislature, in 1793,[3] in extending the right of trial by jury to slaves, "in all cases . . the punishment whereof shall extend to life, limb, or member, . . and in open court of the county," instead of entrusting such trials to an informal sort of court consisting of three or more justices of the peace, and four freeholders (providing they are slaveholders), as the act of 1741 [4] had provided, had, no doubt, humane intentions and expected to better the lot of the offending slave; but it lost sight of one important fact; namely, that, by the act of 1741, the evidence necessary for conviction should be "the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes, mulattoes or Indians, bond or free, with *pregnant circumstances*, as to them shall seem convincing," [5] "credible witnesses," by the law of slavery, being white witnesses. The testimony of negroes, mulattoes, and Indians was believed to be inherently inferior, and had to be corroborated by "pregnant circumstances."

In 1816 [6] the legislature provided that the superior courts should have exclusive jurisdiction of such cases and that "the trial should be conducted in the same manner, and under the same rules, regulations and restrictions, as trials of freemen for a like offence," except that the offending slave was "entitled to the right of challenge for cause only." Even "benefit of clergy, in like manner with a free man," [7] was conceded to him.

A few years later, the slave Ben was indicted for burglary, and "the only evidence to shew any agency therein on the part of the prisoner,

[1] R. H. Taylor, "Humanizing the Slave Code of North Carolina," in *N. C. Hist. Rev.*, July, 1925; J. S. Bassett, *Slavery in North Carolina* (Johns Hopkins *Studies*, ser. XVII., nos. 7-8).
[2] 1 Hawks 434 (436).
[3] Act of 1793, ch. 5, sect. 1. Martin's *Public Acts of N. C.*, I. 38.
[4] Act of 1741, ch. 24, sect. 48. *Ibid.*, I. 65.
[5] Italics are the editor's.
[6] Revisal of 1821, ch. 912, sect. 1, p. 1354.
[7] *Ibid.*, sect. 4.

was given by a *slave*, and that evidence was direct and positive. The counsel for the prisoner contended that such evidence was insufficient to convict . . because not supported by 'pregnant circumstances.'" Nevertheless, the court charged the jury that the unsupported testimony of the slave was sufficient, if they believed it; and the prisoner was found guilty and sentenced to death. The Supreme Court, in 1821,[8] sustained the lower court in overruling a motion for a new trial. Chief Justice Taylor commends the provisions of the act of 1741 respecting evidence, as [435] "a salutary caution, to the triers, not to infer from the unusual mode of trial, that they should be satisfied with weaker evidence than the Common Law prescribes; and, since every other form by which the Law aims to secure an impartial trial was withdrawn from slaves, the Legislature prescribe, that rather more evidence shall be demanded for their conviction, than is in general necessary." He believes, however, that the act of 1793, in extending trial by jury to slaves, virtually repealed [436] "so much of the above section [of the act of 1741], as differs from the Common Law rule of evidence." Moreover, [437] "why should the act of 1816, which does the Legislature so much honor, be so construed as to place slaves on a better footing, in respect to evidence, than free persons? On the trial of the latter for a capital crime, sworn to only by one witness, the Jury is instructed to judge of the credibility of the witness, and, if they believe him, that one is sufficient to convict, without any pregnant circumstances." There seems, however, to be a flaw in the chief justice's reasoning; for, the testimony of a slave being regarded as *inherently* inferior to that of a free man, a slave would be on a worse footing "in respect to evidence, than free persons," if convicted only by the testimony of one other slave. Nevertheless, the opinion of the chief justice was concurred in by Judge Henderson, and Ben was condemned to die, on the evidence of a single slave witness, without pregnant circumstances. The "full benefit of a Common Law trial" was not beneficial to him. The humane purpose of the legislatures of 1741, 1793, and 1816 was thwarted, however conscientiously, by the decision in his case.

The case of State *v.* Will,[9] decided in 1834, is a monument to the cruelty of an overseer, and to the humanity of the court toward a slave. The court had, in State *v.* Mann, in 1829, recognized "the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute."[10] That is, "the master or temporary owner is not indictable

[8] State *v.* Ben, 1 Hawks 434. Judge Hall, *dissentiente*: The act of 1816 [441] "is altogether silent, both as to the competency and credibility of witnesses: that, as I apprehend, was left to the law as it then stood, I mean the law of 1741. . . That the policy of the law of 1741 was founded on a sense of the degraded state in which those unhappy beings existed, no doubt, will be ceded. . . a humane policy forbade that the life of a human being (one of themselves) should be taken away upon testimony coming from them, unless some circumstance appeared in aid of that testimony. . . I am not aware, if we were now to examine their condition, that anything would be discovered so much more favorable to the cause of truth, as to require a repeal of the laws now in force, by the Legislature, or a construction of them, by the Courts, tending to the same end."

[9] 1 Dev. and Bat. 121.

[10] 2 Devereux 263 (268).

for a cruel and unreasonable battery of his slave" [11] if it does not result in death, the act of 1817 [12] having declared that "the offence of killing a slave shall hereafter be . . homicide, and shall partake of the same degree of guilt when accompanied with the like circumstances that homicide now does at common law." The court, in State *v.* Will, held that [171] "An attempt to take a slave's life is then an attempt to commit a grievous crime, and may rightfully be resisted." [167] "Suffering under the torture of a wound likely to terminate in death, and inflicted by a person, having indeed authority over him, but wielding power with the . . madness of fury; chased in hot pursuit; baited and hemmed in like a crippled beast of prey that cannot run far; it became instinct, almost ungovernable instinct to fly; it was human infirmity to struggle; it was terror or resentment, the strongest of human passions, or both combined, which gave to the struggle its fatal result; and this terror, this resentment, could not but have been excited in any one who had the ordinary feelings and frailities of human nature." Will was not found guilty of the murder of his overseer, but merely of manslaughter.

The slave Jarrott, indicted for the murder of a white man, not his master, who had attacked him with a knife and a fence rail, was condemned to death, but the judgment was reversed by the Supreme Court, in 1840, and a new trial granted, on the ground that [83] "insolence of a slave does not justify an excessive battery; . . [86] That is a legal provocation of which it can be pronounced . . that it would provoke well disposed slaves into a violent passion." [13]

Caesar, who, in defense of his friend who was being beaten by a white man in a drunken fury, struck the latter with a fence rail, causing his death, was found guilty of murder and condemned to death; but was given a new trial, in 1849.[14] Judge Pearson exclaims, "Does this show he has the heart of a murderer? On the contrary, are we not forced . . [406] to admire, even in a slave, the generosity, which incurs danger to save a friend?"

It was held, in 1859,[15] that a free negro had a right to strike a white man "in order to protect himself from . . grievous oppression."

The Supreme Court of North Carolina gave a further instance of its humanity by holding that a slave is not "incapacitated by his condition, from making a choice of a master." [16]

II.

It was early recognized in North Carolina that the subordination of the slave population would be endangered by proximity to free negroes. There were two ways of avoiding this danger: first, by prohibiting

[11] State *v.* Will, 1 Dev. and Bat. 121 (171).
[12] Revisal of 1821, ch. 949, p. 1407.
[13] Judge Gaston, in State *v.* Jarrott, p. 88, *infra.*
[14] State *v.* Caesar, p. 132, *infra.*
[15] State *v.* Davis, p. 231, *infra.*
[16] Redding *v.* Findley, p. 223, *infra*; Harrison *v.* Everett, p. 235, *infra.*

emancipation; secondly, by deporting the emancipated. The first method was employed for about ninety years, and was found ineffective or inhumane; then the other was adopted.

The act of 1741 [17] provided that no negro or mulatto slave should be set free "upon any pretence whatsoever, except for meritorious services, to be adjudged . . of by the county court," and if set free otherwise, he was, at the expiration of six months, to be sold by the churchwardens as a slave. If, however, he left the province before the six months had expired, and should afterwards return, he should be sold at the expiration of one month.

After April 16, 1775, "divers evil minded persons,[18] intending to disturb the public peace, did liberate . . their slaves," and it was deemed necessary, in 1777, to pass "an act to prevent domestic insurrection:" [19] "Whereas the evil and pernicious practice of freeing slaves in this state, ought at this alarming and critical time to be guarded against by every friend and wellwisher to his country," etc. The six months' leeway for the slave "otherwise" liberated was taken away and he might be apprehended by any freeholder and delivered to the sheriff to be committed to jail until the next court, and then to be sold to the highest bidder. To the "takers up" was awarded one fifth part of "the neat proceeds . . arising by such sale."

In 1779,[20] "whereas doubts have now arisen, whether the purchasers . . have a good . . title," it was enacted that all such sales "made bona fide, and for valuable consideration, shall be deemed good . . And as many negroes are now going at large, to the terror of the good people of this state," who were illegally liberated previous to the act of 1777, it was enacted that the same proceeding should be had against them as if liberated after that act, with the exception of those who had "inlisted into the service of this or the United States previous to the passing of this act."

But the act of 1777 still proved inadequate, for "divers persons, from religious motives, in violation of the said law, continue to liberate their slaves, who are now going at large to the terror of the people of this state." Consequently the act of 1788 [21] extended to "any freeman" the "emoluments" awarded for the apprehension of such slaves, which had formerly been restricted to freeholders.

Not till 1830 was emancipation of slaves permitted without the former rigorous restrictions, and then "upon the express condition, that he, she or they will leave the State, within ninety days from the granting thereof, and never will return within the State afterwards." [22]

[17] Ch. 21, sect. 56. Martin's *Public Acts*, I. 66.
[18] According to the preamble to the act of 1779, 3d sess., ch. 12. *Ibid.*, p. 266.
[19] Act of 1777, 1st sess., ch. 6. *Ibid.*, pp. 201, 202.
[20] *Ibid.*, ch. 12, pp. 266, 267.
[21] *Ibid.*, p. 450.
[22] Act of 1830, ch. 9. Rev. St., ch. 111, sect. 58.

Many attempts were made to emancipate in evasion of these laws, by bequests or deeds of slaves to trustees, but failed even though no express provision for emancipation appeared in the deed or will. In 1799 Collier Hill bequeathed all his slaves to four men "to keep or dispose of, as they shall judge most for the glory of God, and good of said slaves." [23] The court, in 1822, inferred that the purpose was emancipation and held the trust to be illegal.

In 1827 [24] the court held that the fifteen trustees "of the Religious Society . . called . . Quakers," to whom a slave had been deeded in 1817, "for the use . . of . . the said Religious Society . . forever," could not recover him in an action of detinue; that the deed was made for the benefit of the slave himself, as their religious principles forbade them to hold slaves, and was an evasion of the act of 1777.

In 1833,[25] Chief Justice Ruffin, in his opinion holding the next of kin entitled to all the slaves bequeathed by Thomas Wright, in 1816, to the Society of Friends of New Garden Monthly Meeting, accused the agents of the society of "bad faith, and wilful resistance to the cause of justice, and the claims of property," [26] and subjected them "to account upon the most rigorous principles," for the value of four slaves sent away and the hires of all the others, and interest on those sums.

Eli, to whom Godwin Cotton bequeathed his freedom after the passage of the act of 1830, "refuses the gift of freedom, because of the condition to leave the State, which the law annexes to emancipation." [27]

Sarah Freeman, who died in 1839, "had always said that it was the intention of her former husband and herself to set the negroes free, and send them to a free state . . that she could not do that, and she intended to give them to some steady old Quaker, who would not own slaves." [28] She did so, and her next of kin filed a bill charging a secret trust that the legatee, Newlin, should hold the negroes for their own benefit. The court decreed, in 1844, that the defendant must discover the trust.[29] Newlin answered that the slaves were given him "in trust, that he should have them emancipated according to law" [30] and he stated that "he would long ago have [executed the trusts] . . by sending the negroes out of this State, if he had not been prevented by the continued litigation." The trust was declared lawful in 1849, and the defendant allowed one year in which to effect the emancipation in accordance with the statute of 1830.

[23] Huckaby *v.* Jones, p. 43, *infra.*
[24] Trustees of the Quaker Society of Contentnea *v.* Dickenson, p. 52, *infra.*
[25] Redmond *v.* Coffin, p. 69, *infra.*
[26] They had compromised with the agent of the next of kin, knowing that his agency had been revoked.
[27] Dicken *v.* Cotton, p. 85, *infra.*
[28] Newlin *v.* Freeman, p. 93, *infra.*
[29] Thompson *v.* Newlin, p. 110, *infra.*
[30] Same *v.* same (1849), p. 141, *infra.*

The act of 1860 [31] forbade the emancipation of slaves "by will, deed, or any other writing, which is not to take effect in the life-time of the owner."

III.

The act of 1777 [32] provided for superior courts of law in each district, consisting of three judges. In 1782 an act [33] was passed providing that "each superior court of law . . shall also be . . a court of equity." In 1790 [34] a fourth judge was added to each superior court; in 1798,[35] a fifth; and in 1806,[36] two more.

In 1799 an act [37] was passed providing that "the Judges of the superior courts of law and equity . . shall meet . . together twice in each . . year . . for the purpose of determining all questions of law and equity . . remaining undetermined upon the circuit." This act was to be in force "only for two years, and from thence to the end of the next succeeding General Assembly." [38] In 1801 [39] an act provided that "Whereas the before-recited act . . has been found highly salutary and beneficial . . the same is hereby continued in force for three years longer; and the said meeting of the Judges shall be known by the name . . of 'The Court of Conference.'" In 1804 the act of 1801 was "declared to be in full force" [40] and "the said court shall be deemed a Court of Record." [41] The act of 1805 [42] changed the name of the court of conference to "Supreme Court of North Carolina," and the act of 1818 [43] "concerning the supreme court" reorganized it completely on a new basis, and provided that it consist of three judges appointed by joint ballot of the two chambers of the legislature.

The courts were reorganized upon the adoption of the constitution of 1868, the Supreme Court consisting thereafter of a chief justice and four associates. Article IV., section 1, abolished the "distinctions between actions at law and suits in equity, and the forms of all such actions and suits."

[31] Acts of 1860, 1st sess., ch. 37.
[32] Ch. 2, sect. 2. Martin's *Public Acts*, I. 208.
[33] Ch. 11, sect. 2. *Ibid.*, p. 312.
[34] Ch. 3, sect. 2. *Ibid.*, p. 485.
[35] Ch. 33, sect. 1. *Ibid.*, II. 128.
[36] Ch. 1, sect. 5. *Ibid.*, p. 274.
[37] Ch. 4, sect. 1. *Ibid.*, p. 133.
[38] Sect. 15. *Ibid.*, p. 135.
[39] Ch. 12, sect. 1. *Ibid.*, p. 176.
[40] Ch. 18, sect. 1. *Ibid.*, p. 235.
[41] *Ibid.*, sect. 2.
[42] Ch. 1, sect. 1. *Ibid.*, p. 256.
[43] Revisal of 1821, ch. 962.

Re negro boy, 1 Col. Rec. N. C. 585, March 1703. "Orderd that Tho Symons pay unto the petitioner the sum of five pounds, as he being executor of Charles Jones Deceased itt being for the bringing up a negro boy."

Chevin v. Reed, 2 Col. Rec. N. C. 95, April 1713. Chevin "Declares for the Sume of Twenty nine pounds five Shillings for Certain Indian Slaves by the publick: Sold . . to the Def'ts . . the Jury find for the pl't"

Overman v. Willson, 2 Col. Rec. N. C. 96, April 1713. "Information ag't William Willson . . That whereas . . by an act . . Intitled (an act Concearning Servants and Slaves . . it is Enacted That whosoever Shall . . Sell . . to . . any . . Slave . . without the . . Consant of his . . master . . Shall forfeite . . Tenn pounds to the Master . . nevertheless . . Willson . . Did . . without the leave [of Overman] . . Sell . . unto a Man Slave to him belongen named petter a Turckey Cock to the vallue of five Shillings . . the Jury find him Guilty . . Ordered that Wm. Willson be fined . . Tenn pounds . . to be payd to . . Overman with costs: and . . Overman . . remitts the fine . . Except Forty Shillings on Condition that . . Willson pay the accruing costs" So ordered.

Blish v. Sanderson, 2 Col. Rec. N. C. 97, April 1713. Action of trover "for Certaine Indian Slaves which by finding Came to the possession of the Def'ts" See same *v.* same, *ibid.* 113, *infra.*

Same v. same, ibid. 97, April 1713. Action of trover "for a Certaine Indian man: Slave called John Coneway which . . by finding came to the possession of the Said Def't"

Cary v. Tookes, 2 Col. Rec. N. C. 104, April 1713. "Miles Cary Gent: of virg'a Comes by . . his attorneys to pros his Suite ag't James Tookes . . in an accon of Tresspass: and Contempt ag't the forme of a Statute[1] . . and Saith: That: he . . Doth: harbour; and Detaine a Certaine Negro Man Slave to him the Said Miles belongen; Comonly Called Stephen: . . the Jury find for the p'lt" October 1713, [112] "Ordered: That: James Tookes pay and Deliver to . . Cary: the Said . . Stephen as alsoe the Sume of Ninty: Two pounds Ten. Shill for a hundred Eighty: five Day: Detaineing of the Said Slave:" Defendant appealed.

Blish v. Sanderson, 2 Col. Rec. N. C. 113, October 1713. See same *v.* same, *ibid.* 97. "the plt . . apprill last . . was Seized and possessed of one Indian woman Slave named Ann and one femeal Child . . and . . the afs'd Slaves afterwards (viz't) in . . June . . by finding Came to

[1] Act of 1706, "Concerning Servants and Slaves."

the . . [114] possession of the Deft Nevertheless the Deft . . the afs'd Indian Slaves to the plt to Deliver or restore . . Doth as yett Gainsaye: . . the Jury find for the plt 30£ . . Judgment . . Stayed"

Pendleton v. Guthrie, 2 Col. Rec. N. C. 114, October 1713. The plaintiff "Saith that: Dan'l Guthrie and Mary his wife . . and Especially she The Said Mary: . . Did in . . June last past on a Sabath Day . . Trade[1] to and with a negro: woman to him . . belongen Comonly Called . . Jenny: and of her Did . . receive Two: Sticks of whalebone to the value of Two: Shills in Consideration whereof She the Said negro woman Did or was to . . receive of her that Said Mary Two: fouls or Dunghill Cockes without the Leave . . [115] of him . . pendleton" The defendant demurred. Demurrer overruled. Arrest of judgment granted.

Re Indian Pompey, 2 Col. Rec.[2] N. C. 315, November 1718. "confederacy of Mr Worseleys Children and servants with his slave Pompey in order as it is believed to keep the said Slave from the deserved punishment due to him for former Roguerys of this kind. . . Ordered that Mr. Thomas Worsley . . give bond . . that he and his Daughter Mary[3] . . attend the Governor and Council or General Court at the next meeting. . . And . . Ordered that the Marshall or his Deputys in the face of the Courts immediately give to John Worseley son of . . Thomas Worseley 39 lashes well laid on his bare back and . . that Nathaniel Ming servant to . . Thomas Worseley in Consideration of his being servant and discouvering the above said Roguery have but 29 lashes on his bare back at the same time and place with Mr. Worseley son And . . Ordered that all possible means be used towards . . takeing the afos'd Indian slave either Dead or alive and in case he should be taken alive that the Governor desired to bring the said slave to speedy Justice."

Re Knight, 2 Col. Rec.[4] N. C. 341, May 1719. "Tobias Knight Esq'r Sec'ty of this province and a member of the Council attended . . to make answer to . . Depossitions and other Evidences . . Copy of several Depossitions and other Evidences given before the Court of Admiralty . . for hearing . . Piracy for . . Verginia . . for the tryal of James Blake . . and other pirates late of the Crew of Edward Thache . . [342] The four prisoners . . acknowlegeth that . . in September they went from Ocacock in a periauge with Edward Thache to the house of Tobias Knight Sec'ty of North Carolina and carried . . three or four Caggs of Sweet meets" and robbed a "periaugor" on the way back. William Bell deposed that it was his "periaugor" which was plundered: [343] "that perticularly the deponant was robbed of a silver cup of remarkeable Fashion . . which . . has been found on Board Thaches Sloop . . Two hours after . . he went to complaine to the Governor of North Carolina who sent him to Mr. Knight then Chief Justice upon which the said Knight gave him the Warrant or hue and Cry . . and

[1] See act of 1706, "Concerning Servants and Slaves."
[2] Council.
[3] *Ibid.* 358. "Mary Worseley . . made her appearance [July 1719] and acknowledged her offences and is fined . . Tenn Pounds."
[4] Council.

that notwithstanding the deponant did particularly discribe the periaugor and the men by whome he was thus robbed and did repeat . . the Language the whiteman used . . and declared that the other foure were Negroes or White men disguised as such . . yet . . Knight did not discover to the deponant that any such periaugor had been at his house" Evidence of Captain Brand: [344] "the piratical Goods afs'd were found in his Barn covered over with fodder" [345] "The Humble remonstrance of Tobias Knight [to the Governor and Council of North Carolina] . . in answer to the several Depossitions and other pretended Evidences . . as to the four next Evidence . . under the name . . of foure of Capt Thaches men is utterly false and such as . . ought not to be taken against him for that they are (tho cuningly couched under the names of Christians) no other than the four Negro Slaves which by the Laws and customs of all America Aught not to be Examined as Evidence . . against any White person whatsoever and further . . that what they did then say was in hopes of Obtaining mercy tho' they were then Condemned and since Executed . . [347] neither did . . Knight . . contract any acquaintance with . . Thache or any of his crew nor did deal buy or Sell . . with or of any of them . . Save only Two Negroe men which . . Knight purchased from Two men who had left . . Thache and had rece'd their pardons" [349] "this Board . . it appearing to them that the foure Evidences called by the names of James Blake Rich'd Stiles James White and Thomas Gates were actually no other then foure negroe Slaves and since Executed . . and that the other Evidences . . are false and malitious and that he hath behaved himself . . as becomes a . . faithful Officer . . it is the opinion of this Board that he is not guilty and ought to be acquited"

Re Low, 2 Col. Rec. N. C. 365, October 1719. "The Grand Jury presents Em'l Low for breaking the Sabbath with three of his Negros with him . . The Grand Jury presents Benj'n West for breaking the Sabbath by his negros working on the Sabbath" [411] "Ordered [1720] that if Eman'll Low, . . and Benj. West do pay . . the fine appointed by Law . . they shall be hereby discharged"

Re Palmer, 2 Col. Rec. N. C. 406, July 1720. "Paul Palmer being called to answer for suspicion of Feloniously takeing a negro man named Sambo with divers goods the estate of . . Crisp, Appeared, . . Ordered that he be continued in Custody . . he refusing to enter into Recognizance to appear" [409] "The Jurors [November 1720] . . do present that Cush als Quashey a Negro Man Slave belonging to Paul Palmer . . did . . convey . . from the Plantation of Nic's Crisp . . a negro man Slave named Sambo together with one new Rugg to the value of twenty five shillings one coat one shirt one pair of New Lether Breeches one pair of Stockings one pair of New shoes and one hatt value one pound twelve shillings and six pence . . and them did carry . . to the Dwelling house of . . Paul Palmer . . and . . did deliver to . . Paul Palmer and Joanna his wife who . . did . . take . . and keep the same" Palmer was also indicted for commanding Cush "to go with

two horses to the Plantation of Nic's Crisp . . and to take . . Sambo with his Cloaths and bedding . . And that . . [410] Cush . . did go" Also "The Jurors . . Present . . That the . . Ch. Justice of this Province . . a certain warrant . . to . . Wilkins . . Constable made . . . and Commanded him . . Cush . . to attach and to bring before him . . and also to bring . . Sambo . . which . . Wilkins . . Cush . . did take . . and him . . in his custody . . had kept . . and also . . did take and attach . . [411] Sambo and him had in his custody Nevertheless Johanna Palmer wife of . . P. Palmer . . by force [the same day] . . Sambo . . rescued and him . . then and there at large to run and go away did permitt" See *ibid.*, pp. 415, 416, 437, 442, 444, 447. Paul and Joanna Palmer, indicted [471] "for being Accessories to a Felony comitted by one Sambo [*sic*] . . made their appearance [1722] and noe person appearing to prosecute . . they were dismist without day paying costs." The Attorney General "confesst that the Misdemeanour . . against . . Palmer [1] he would not Prosecute any further. . . Palmer is Dismist . . paying costs. Joanna . . made her appearance and no person appering . . to make good the charge . . dismist without day paying costs"

Re Taylor, 2 Col. Rec.[2] N. C. 392, August 1720. "Thomas Taylor Marriner appeared . . upon a warrant from . . the Governor for his Assaulting and missuseing a negro man belonging to Coll. Fred Jones without any manner of provocation . . Ordered that he remaine in the hands of the Marshal til he give good . . security . . one hundred pound that he appear"

Re Low, 2 Col. Rec. N. C. 411, November 1720. See same, *ibid.* 365, p. 9, *supra.*

Laneer v. Harding, 2 Col. Rec. N. C. 550, March 1724. "Philander a Negro appearing at this Barr complaining that he is held as a Slave by Thomas Harding Executor of Thomas Sparrow . . altho' he was freed by . . Sparrow in his lifetime and all the practising Attorneys of this Court are retained by the said Harding and he . . Philander utterly ignorant of the Law . . prays that he may have Councill assigned" Counsel was appointed, and "exhibitted in Court the complaint . . [551] Philip Laneer alias Philander a negro man humbly complains . . for that the said Philip Lander . . being once . . held as slave by . . Sparrow was by him freed as by an Instrument under the hand of . . Sparrow and before Evidence Yet . . Harding . . doth hold the said Negro as a slave . . Ordered that . . Philander be and remaine in the . . keeping of the Provost Marshall Gen'l till the next Court;" At the next court, in April 1724, [555] "Philip Laneer . . to prosecute . . failed but this Court being informed that the . . Negro before his being freed . . was by Deeds now recorded in Maryland . . assigned: And it is also suggested that at the time of making the said Deed of freedom

[1] [443] "the Jury do find [1721] the Def't Guilty of a Misdemeaner. . . the Def't moves in Arrest of Judgment which is Granted."

[2] Council.

. . Sparrow was indebted great sums of Money . . Ordered that . . philander be hired to any person that will be security for his appearance at the next Court . . Reston . . offered to pay for his service till the conclusion of the next Generall Court five pounds" At the General Court held in October 1724 [557] "Reston produced the said Philip Lanier . . And . . Harding . . exhibited . . Sparrows Book of Accounts which being compared with this Deed . . Adjudged that . . Philander's petition be dismist the . . Deed . . being adjudged not to be the Deed of . . Sparrows"

Laneer v. Harding, 2 Col. Rec. N. C. 557, October 1724. See same *v.* same, p. 10, *supra.*

Re Cotton, 2 Col. Rec. N. C. 591, July 1725. "A Bill of Indictment ag't John Cotton for marry'n a Molatto Man to a White woman." He failed to appear. [594] "ordered that a Capias should order requiring him to appear" October 1725 Cotton appeared but the Attorney General [602] "would no further prosecute . . Ordered that he be thereof dismist without day paying Costs."

Re Blacknall, 2 Col. Rec. N. C. 662, July 1726. "Information made by the Reverend Mr. John Blacknall . . against himself for joyning together in . . Matrimony Thomas Spencer and Martha paule a Molatto Woman" [672] "whereby he the sayd John Blacknall hath incurred a penalty of fifty pounds the One half to the Informer which he therefore demands"

Re Vantrump, 2 Col. Rec. N. C. 702, March 1727. "Complaint and petition [February 3, 1727] of peter Vantrump a free Negro Sheweth that your Complainant being a free Negro . . hath hired himself to Service Sundry times particularly in New York . . and being at St. Thomas's this Summer past one Capt Mackie in a Brigantine from thence being bound (as he reported) to Europe . . Your . . Complainant agreed to go with him in Order to gett to Holland but instead . . Mackie came to North Carolina where combining with one Edmond porter and fearing . . Mackie not to be on a lawfull Trade Your Complainant was desirous to leave him and . . porter by plausible pretences gott Your Complainant to come away . . with him altho' Your Complainant often told the Sayd porter that he was not a Slave . . [703] Yet . . porter now against all right now pretends Your Complainant to be his Slave and hath held . . him as such wherefore Your Complainant prays he may be adjudged . . free" Order of the Chief Justice, February 4, 1727: "that the sayd Negro be taken by the provost Marshall . . to be had . . at the next Gen'l Court for Tryall of his liberty . . and that Edmond porter be served with a Copy of the Complaint . . and the Order thereon with a *Scire facias* . . to appear and Shew cause . . why . . peter should not be judged free and that there may be no loss in the mean time to the Owner (if any such should appear to be) it is Ordered that the provost Marshall do lett . . peter to Service to Such Safe persons as will be answerable for his forthcoming" At the March General Court, "Arguments on both Sides being . . fully heard . . Ordered that the Sayd petition be dismist."

Re Puckett, 2 Col. Rec. N. C. 704, July 1727. "A presentment against Elizabeth puckett for that she hath left her husband and hath for Some years cohabited with a Negro Man of Capt Simon Jefferies" See also *ibid.* 711.

Rex v. Jack (a slave), 1 Hawks 435 n., April 1741. "The [Craven County] Court met on the 27th of April, 1741, to enquire 'for our Soveraign Lord the King, concerning the murther of Robert Pitts.' . . terminated in the conviction and almost immediate execution of Jack, a slave of the deceased; and from the evidence, as given in detail on the record, one cannot but be forced to the conclusion, that the excitement must have been wonderful, which could have induced men to doom to death a fellow being on such testimony as, if laid before a grand jury of the present day [1821], would not induce it to find a bill." [Hawks, Reporter.]

Tims v. Potter, 1 Martin N. C. 22, 178-. Held: The increase of slaves belongs to the reversioner or remainderman,[1] not to the tenant for life of the mother. "As to the children being an incumbrance on the life estate, . . people are generally of a different opinion, as to thinking a breeding wench a loss."

Arrington v. Arrington, 1 Haywood N. C. 1, October 1789. "The [negro] boy being in Virginia at the time of the gift, and no delivery made, except of a dollar instead of the boy: the Court ruled, . . the gift was good without delivery:"

Farrel v. Perry, 1 Haywood N. C. 2, October 1790. Held: "If a father at the time of his daughter's marriage, puts a negro . . into the possession of the son-in-law, it is in law a gift, unless the contrary can be proven."

Skipper v. Hargrove, 1 Martin N. C. 74, April 1791. "Patience of the price of two hundred pounds, Ally, of the price of £100, and Violet, of the price of £100. . . Bet of the price of £50,"

State v. White, 1 Haywood N. C. 13, March 1792. "Indictment for trespass, in taking . . two negros . . out of the possession . . of"

State v. George (a free negro), 1 Martin N. C. 40, March 1794. "Jones had drawn a bill of indictment for burglary against the defendant: . . Martin . . observing that one of the witnesses about to be sworn, was a negro slave; that although the defendant was a negro, yet, he being a freeman, it was perhaps improper that a slave should testify against him. McCoy, J. . . If there be any thing in the objection, the court will attend to it at the trial. The slave was sworn, and the bill was found. The prisoner . . pleaded not guilty; but made his escape before the day assigned for his trial."

Conner v. Gwin, 1 Haywood N. C. 121, September 1794. "two executions . . were levied by the Sheriff on the property of the testator in his lifetime, and particularly on a negro fellow . . that before the day of

[1] For the probable reason, see Glasgow *v.* Flowers, 1 Haywood N. C. 233 (236).

sale, this negro privately murdered the testator, and that on the day of sale the perpetrator of the murder had not been discovered. That this negro was sold on that day, and purchased by the Plaintiff . . That afterwards . . this negro . . was tried, condemned and executed; and the bill prayed that . . this Court would decree him [the plaintiff] to stand in the place of the judgment creditors, . . [122] decree was entered accordingly."

Cox v. Dove (*a free negro*), 1 Martin N. C. 43, March 1796. "Trespass *quare clausum fregit*, . . To prove the entry a negro slave was called and offered to be sworn. But the Court [Williams, J., saying he never heard such a thing asked: Haywood, J., *tacente*] refused to admit the witness, although the defendant was stated to be a negro." [1]

State v. Evans, 1 Haywood N. C. 281, April 1796. "Nicholson said, I will not fight you myself, but I have a negro fellow shall fight you. This exasperated Evans to a great degree."

Knight v. Thomas, 1 Haywood N. C. 289, April 1796. "under the act of 1784, ch. 10, sect. 7, a parol conveyance of negroes is good as between the parties themselves, as before the making of this act; but . . void as to creditors, as well creditors who became such after the conveyance as those who were creditors at the time;"

Porter v. McClure, 1 Haywood N. C. 360, September 1796. "if the negro was really an ideot, then the vendee of Greenwood may resort to him for selling an unsound negro."

England v. Witherspoon, 1 Haywood N. C. 361, September 1796. "The note . . was for one hundred pounds, payable . . by delivery of a likely negro, of the age of eleven years, by a day certain."

Arnold v. Bell, 1 Haywood N. C. 396, October 1796. In 1795 Arnold bought a man slave from his father for £100.

Evans v. Kennedy, 1 Haywood N. C. 422, October 1796. "The Plaintiff was a person of colour, who claimed his freedom, . . The Plaintiff and Defendant had agreed that an action should be instituted without process, and an issue made up to try the fact; . . *Et per curiam*— . . The action used on such occasions for eight or ten years past, is the action of trespass and false imprisonment; . . The issue was then made up . . and the evidence not being competent to prove the Plantiff's freedom, the court recommended the withdrawing a juror, which was agreed to; and then the Plaintiff's counsel moved, that Defendant might give bond and sureties to permit the Plaintiff to appear at next term, and to treat him with humanity in the mean time." So ordered. [488] "Judge Haywood—I think the bond usually given goeth further—to allow the Plaintiff time to collect evidence and procure depositions, if necessary. Judge Williams—I do not recollect the Defendant was ever bound to that: it would produce a loss of the Plaintiff's service, which in the event of

[1] "Note.— . . see . . 1 Rev. St. ch. 31, sect. 81. It is believed that the law is now [1843] clearly settled that a slave is a competent witness against a free negro."

a verdict against him, the owner could not be compensated for. So the bond was ordered to be taken as above."

Hogg v. Ashe, 1 Haywood N. C. 471, April 1797. [472] "in 1789, the Defendant recovered against Campbell £500 for negroes of the Defendant, carried away by Campbell when he joined the enemy."

Branch v. Bradley, 2 Haywood N. C. 53 [215],[1] March 1798. Trespass. "*Per Curiam.* . . if the constable after the arrest, suffered the negro to be beaten by Bradley, he was a trespasser; for the arrest was made for the purpose of carrying him before a magistrate, and not for that of beating him . . Verdict and judgment for the plaintiff"

State v. Weaver, 2 Haywood N. C. 54 [216],[2] March 1798. "Indictment for the murder of a negro man . . the property of Smith, not guilty pleaded: . . charge to the jury. . . Murder is where the homicide [is] . . doing the act under such circumstances as shews the heart to be exceedingly malignant . . [217] as if for a slight offence . . any man should take up his servant and beat him so excessively as to cause his death; . . This is the law with respect to a freeman who is killed, but with respect to a slave it is somewhat different; for if a free servant refuses to obey . . and the master endeavor to exact obedience by force, and the servant offers to resist by force . . and the master kills, it is not murder, nor even manslaughter, but justifiable; much more is it justifiable if the slave actually uses force and combats with the master. If . . the deceased actually attempted to kill the prisoner, who was a temporary master, having hired him for a year, and . . the prisoner killed in his own defence, he is justifiable; if . . the deceased actually used force and was resisting by force . . or if he offered to resist by force when he was killed, the prisoner is justifiable. If none of these circumstances are to be found . . and you are of opinion that the killing with the pistol was with malice aforethought . . then the prisoner is guilty of murder. . . verdict for the prisoner of not guilty."

Blount v. Mitchell, Taylor N. C. 131 [80],[3] September 1798. Trespass. [81] "The sheriff sold the negroes on the day mentioned in the advertisement, but they were not present, . . but in the possession of Blount. Mitchell purchased the negro named . . and afterwards, in company with three other defendants, went armed in the night time to Blount's plantation, and carried away the negro; . . [82] Judgment for £120."

Witherington v. Williams, Taylor N. C. 134 [83],[4] September 1798. "The defendant was the widow of . . Ferguson, who was killed at the battle of the Allemance, leaving two children. The Legislature, in order to make some provision for his family, directed that one hundred pounds should be deposited . . to purchase negroes for the widow and children. Two negroes were purchased,"

[1] Battle's edition.
[2] *Id.*
[3] *Id.*
[4] *Id.*

State v. Piver, 2 Haywood N. C. 79 [247],[1] March 1799. "He was indicted for the murder of a negro slave, . . [the prisoner] returning home from a neighbor's house, with a gun, in a public road, the deceased came meeting him, and the prisoner, a boy of about 13 or 14, said to him jocosely, stand off, or I will shoot you; my gun is charged with buck shot: The deceased continued to walk on, and Piver got before him on that side the road which the other had taken, whereupon the negro shoved him with some violence to the other side of the road, and Piver would have fallen had he not caught on his hands; the deceased passed by, and Piver rose up and shot him, so that he died. *Per Curiam.* This is manslaughter; and in the act of Assembly[2] against the malicious killing of slaves there is no punishment affixed to manslaughter; so he must be acquitted. Verdict accordingly.

State v. Hall, Taylor N. C. 126 [76],[3] May 1799. "The prisoner was indicted upon the act of 1779, cap. 11,[4] for stealing a male slave, the property of the prosecutor, and was . . found guilty" Motion to arrest judgment because the words [79] "marking the intention" were omitted in the indictment. Reasons overruled: "the act of Assembly . . was passed in turbulent times, when a practice prevailed of carrying slaves away, under the pretence that they belonged to the public, as confiscated; or that they were owned by disaffected persons: they were sometimes carried off . . by stealth, at other times openly and by violence: the former case is embraced by the word steal:" To the latter case, the words of intention expressed in the act "must be exclusively referred." [Moore, J.]

Smith v. Weaver, Taylor N. C. 58 [42],[5] October 1799. "an action of trespass for killing a slave, the property of the plaintiff, who had been hired to the defendant." The writ in the case had been sued out, pending an indictment for the same fact. The defendant had been acquitted. Verdict for the plaintiff, and motion for a new trial denied: [44] "the trespass remains."

Spendlove v. Spendlove, Cam. and Nor. 36, June 1800. "the complainant, who is an inhabitant of the Island of Jamaica . . and the defendants are the natural children of . . Elletson, . . who . . 1783, . . devised all his estate . . to be equally divided . . among them, . . that a Court . . 1790, . . allotted twenty-six negroes as the proportion of the slaves which the complainant was entitled to under the will . . the said slaves . . were hired [out] by the County Court"

State v. Sue (*a negro woman slave, the property of John Cates*), Cam. and Nor. 54, June 1800. "The prisoner had been tried in the County Court . . on a charge of giving or procuring to be given to William Cocke and several of his family . . a poison supposed to be arsenic, with an intent to kill . . and was found guilty . . by the Jury

[1] *Id.*
[2] "the law is now altered. See 1 Rev. St., ch. 34, sect. 9."
[3] Battle's edition.
[4] 1 Rev. St., ch. 34, sect. 10.
[5] Battle's edition.

. . on which conviction, the judges present, passed the following sentence, 'That the prisoner Sue, . . [55] the 14th day of April, 1800, be taken to the place of execution, and . . hanged by the neck until she be dead.' . . on the 6th day of April, . . Duffy [counsel for the prisoner] . . obtained writs of *Supersedeas, Certiorari,* and *Habeas Corpus,* . . in consequence of which, the Sheriff . . brought up the said slave to the Superior Court, . . Duffy . . contended that the County Court . . had no authority to pass sentence of death on the prisoner, the crime of which she was convicted, being one of such a nature as was not by the laws of the land, punishable with death, and he cited . . Act of 1794,[1] . . [56] that the Legislature had no intention to punish slaves in a more sanguinary manner than freemen convicted of the same offence; . . [58] This case being wholly new, his Honour Judge Johnston desired that it should be adjourned." Judgment reversed: [62] "The discretion given of the Act of Assembly [of 1741] is a legal discretion, not the power of altering punishments, or affixing to any offence, a punishment unknown to the law." [Macay, J.] Taylor, J., dissented: [60] "The act of 1786[2] . . does in the preamble recognize the fact, that many persons by cruel treatment to their Slaves, cause them to commit crimes for which they are executed. It then proceeds to take away the allowance which had been theretofore made to the owners of such Slaves. The cruel treatment . . must consist in withholding from them the necessaries of life, and the crimes thence resulting, are such as are calculated to furnish them with food and raiment. It then appears that in 1786, the Legislature was perfectly aware, that from 1741 until that time, it had been the practice to execute Slaves upon a conviction of grand larceny, when free persons were only burnt in the hand, . . [61] It seems to me that the acts subsequently made, had no other end than to extend to them the trial by Jury, and to ascertain the respective provinces of the Court and the Jury, still leaving the discretion of the former as to the punishment, as unlimited as the first act had made it."

Estis v. Lenox, Cam. and Nor. 73, June 1800. "an action of Debt . . to recover the penalty of fifty pounds, created by Chapter 4 of Acts of 1791, against those who should harbour or maintain any runaway slaves."

M'Allister v. Spiller, Cam. and Nor. 95, June 1800. "The Plaintiff's intestate . . was legally entitled to the service of a Negro . . by hire, for . . one year, . . Spiller, the Defendant's testator, in . . 1795, seduced . . the said Negro . . to absent himself from the service"

Mullington v. Shipman, Cam. and Nor. 113, June 1800. Mullington's will, executed 1776: "I will . . that the children, which . . may be born of the . . negro wench Moll, bequeathed to my grand-daughter Lucy Lewis, be delivered to the young children, according to their birthrights, beginning with Aaron, then Moses, so down to the youngest;"

Jesse Gober v. Gober, 2 Haywood N. C. 127 [289],[3] October 1800. "*Per Curiam.* . . The plaintiff is detained as a slave, and has com-

[1] Ch. 11, sect. 1. Iredell's Revisal, Laws of N. C.
[2] *Ibid.,* p. 588.
[3] Battle's edition.

menced this action to recover his freedom; and now moves without any affidavit, that defendant be ordered to give security, that the plaintiff shall be forth coming at the next term. . . The court will not interfere but where it is induced to believe by affidavit that defendant is about to send the plaintiff out of the country in order to defeat the end of his suit, or to adopt other means calculated for the same end."

Jones v. Jones, 2 Haywood N. C. 128 [292],[1] October 1800. "she was under the necessity of selling this negro for the support of her family."

Anonymous, 2 Haywood N. C. 134 [302],[2] January 1801. "the testator devised that his executors should procure, if possible, the emancipation of his slaves; and if it be impossible that then the plaintiff should have them. Several assemblies have been held since the death of the testator, and they are not emancipated." Held: "the complainant is entitled." "the executors had only a reasonable time, not their whole life to perform the trust: they should have applied as soon as they reasonably could. Having not done so in several years, it is to be taken that the trust is impossible to be performed;" [Taylor, J.]

Cunningham's Heirs v. Cunningham's Executors, Cam. and Nor. 353, December 1801. Cunningham's will, executed 1792: "I will . . that forty feet back [from an alley], including the house where Mr. Potts is now resident, be at the expiration of the lease rented out for the maintenance of a negro woman of mine, named Rachel, and the maintenance and education of her three mulatto children . . and the child of which she is now pregnant." He devises part of another lot in like manner, [354] "with all the rest of the land lying between Lee's creek and Deep Inlet Creek, between Rachel and her three children, share and share alike, to them and their heirs. *Item.* I will . . that my negro men Virgil and Quash, together with my negro woman Tamer, should live on the plantation where I now reside, on Lee's creek, to work for the maintenance of Rachel's children, during the natural life of the said negroes. *Item,* I will . . that Rachel and her children should be set free immediately after my decease." Cunningham's executor "took possession of that part of the real estate, the rents of which are directed . . to be applied towards the maintenance and education of . . Rachel and her children. . . Rachel and all her children, before and at the time of making the will, and ever since, have been slaves."

Held: the devise of the land is void: [355] "The intention of the testator seems plainly to have been, to transfer the beneficial interest in the lands to Rachel and her children; and were there no legal impediments . . I should think the words made use of equivalent to an express devise of the land. But it is indispensable . . that there be a devisee appointed who is competent to take: Slaves have not that competence;" [Taylor, J.]

[1] *Id.*
[2] *Id.*

State v. Boon,[1] Taylor N. C. 246 [103],[2] December 1801. "The prisoner was indicted on the third sec. [chapter four] of the act passed in 1791, . . 'that if any person shall be hereafter guilty of wilfully and maliciously killing a slave, such offender shall upon the first conviction . . be adjudged guilty of murder, and . . suffer the same punishment as if he had killed a freeman,' . . [104] The prisoner was found guilty by a Jury"

Judgment arrested: [105] "It may be thought that the words 'shall suffer the same punishment as if he had killed a freeman,' from the connexion . . should be allowed to have this meaning, . . 'as if he had wilfully and maliciously killed a free man.' I cannot agree . . [106] Punishments ought to be plainly defined . . [108] What the powers of a master were over his slave, in this country, prior to . . 1774, have not been defined. I have not heard, that any convictions and capital punishments took place before that period, for killing of negroes." [Hall, J.] Johnston, J.: [110] "The murder of a slave, appears to me, a crime of the most atrocious and barbarous nature; much more so than killing a person who is free, and on an equal footing. It is evidence of a most depraved and cruel disposition, . . [111] had there been nothing in our acts of Assembly, I should not hesitate . . to have pronounced sentence of death on the prisoner. . . The killing of a free man is punished in different ways, . . there remains no doubt in my mind respecting the intention of the Legislature; but . . in the construction of penal statutes, . . nothing shall be taken by construction . . from the context." Taylor, J., and Macay, J., delivered separate opinions concurring.[3]

Gobu v. E. Gobu, Taylor N. C. 164 [100],[4] April 1802. "Trespass and false imprisonment; plea that the plaintiff is a slave: . . the plaintiff, when an infant, apparently about eight days old, was placed in a barn by some person unknown: that the defendant, then a girl of about twelve years of age found him there, conveyed him home, and has kept possession of him ever since; treating him with humanity, but claiming him as her slave. The plaintiff was of an olive colour, between black and yellow, had long hair and a prominent nose. . . [101] the following observations were made to the jury. By the Court. I acquiesce in the rule laid down by the defendant's counsel, with respect to the presumption of every black person being a slave . . . because the negroes originally brought to this country were slaves, . . If therefore a person of that description claims his freedom, he must establish his right to it by such evidence as will destroy the force of the presumption arising from his colour. But I am not aware that the doctrine of presuming against liberty, has been urged in relation to persons of mixed blood, or to those of any colour between the two extremes of black and white; and I do not think it reasonable that such a doctrine should receive the least

[1] Court of Conference.
[2] Battle's edition.
[3] "Note.—By the act of 1817, (see 1 Rev. Stat. ch. 34, sec. 9,) it is provided that 'the offence . . shall be denominated . . homicide, and shall partake of the same degree of guilt . . that homicide now does at common law.'"
[4] Battle's edition.

countenance. Such persons may have descended from Indians in both lines, or at least in the maternal; they may have descended from a white parent in the maternal line or from mulatto parents originally free, in all which cases the offspring, following the condition of the mother, is entitled to freedom. Considering how many probabilities there are in favour of the liberty of these persons, they ought not to be deprived of it upon mere presumption: more especially as the right to hold them in slavery, if it exists, is in most instances, capable of being satisfactorily proved. Verdict that the plaintiff is free."

Cutlar v. Brown, 2 Haywood N. C. 182 [380],[1] May 1802. Action " for seducing away the plaintiff's slave from his service "

Smith v. Williams, 1 Car. L. R. 263 n., 1802. Williams sold Smith, in 1802, " one negro fellow . . about 50 years of age, for . . three hundred dollars," warranting the title, in the bill of sale, but not the quality of the negro. The negro was " afflicted with a rupture; "

Rutherford v. Craik, 2 Haywood N. C. 262, June 1803. Marriage settlement, 1761: " Jane Innis . . doth . . grant . . unto . . Swann . . all and singular her negro slaves following, by name [eighty in number], together with their future increase; . . in trust; . . to the use . . of the said Jane Innis . . until the said intended marriage shall be . . solemnized; and . . after . . to the only use of . . Swann . . in trust; nevertheless, that . . Swann . . shall . . suffer the said Jane Innis to receive all the profits arising by the negro slaves aforesaid, either from their labor, increase or hire; . . during . . her natural life for her separate use . . Provided also, . . that it shall . . be lawful . . for the said Jane . . during her natural life, and when she shall be so minded, notwithstanding her coverture, and as if she were . . unmarried, to have . . the whole and sole care, ordering, direction and management of the negro slaves,"

Troughton v. Johnston, 2 Haywood N. C. 328 [498],[2] October 1804. " the purchase . . was a mere pretence, . . the real object having been to sell to Kirk, a buyer of negroes, by running him up to a high price,"

Lavender v. Pritchard, 2 Haywood N. C. 337 [513],[3] January 1805. " Pritchard . . said to the plaintiff, a child, ' I give you all my corn and all my hogs, my horse, . . and my boy; ' (naming him.) He then took out of the wallet, an ear or two of corn, and said, here take of the corn I have given you—and gave the child an ear or two."

Held: [515] " it cannot be considered as a delivery of all the things given, because the horse . . was present, and might have been delivered, and yet was not; and as to the hogs and negro boy, no words were expressed to shew an intent that the ear of corn should be a symbol of these."

Spivey v. Farmer, 2 Haywood N. C. 339 [519],[4] January 1805. " This action was brought for, that the intestate of the defendant . . persuaded

[1] *Id.*
[2] *Id.*
[3] *Id.*
[4] *Id.*

a negro man of the plaintiff to attempt to transport him in a flat across the Neuse river, with a load which rendered the attempt dangerous, when the river was swelled and rapid: . . the flat sunk, and the negro, as well as the intestate himself, were drowned. Taylor, Judge. . . The negro was usually employed by his master to ferry over travellers and others for a reward; and that is equivalent to a command from the master to carry them over when applied to: it places him in the light of a common carrier. . . Verdict for the defendant."

Ridley v. Thorpe, 2 Haywood N. C. 343 [525],[1] April 1805. [527] "the administrator . . permitting the widow to remove from Virginia to North Carolina, with 18 or 20 negroes, in the year 1780."

Parker v. ———, 2 Haywood N. C. 345 [528],[2] May 1805. "The plaintiff sued the defendant for his freedom, . . whereupon the defendant put him in prison. The plaintiff's counsel complained of this to the court, and moved for an *habeas corpus*; and the court ordered one, . . The plaintiff was brought into court on the day appointed, and examinations in writing were taken to prove the probability that he was free; and a strong case was made out by them—these were filed in court. The court ordered that the defendant either should give security to leave the plaintiff at liberty, until the next term, to go whither he pleased to procure testimony; or should submit to the court to go immediately into the consideration of what was proper to be done in the *habeas corpus*. He chose the former;"

Walker v. Mebane, 1 Murphey 41, June 1805. "Mebane gave to his niece . . the negro slave . . when she was a small girl, and not wishing to seperate her from her parents during his life, he agreed with his niece to keep the negro girl at his own expense during his life."

Jasper v. Tooly, 2 Haywood N. C. 351 [538],[3] July 1805. Tooly "had given a bond . . with a condition underwritten, that if Tooly should recover certain negroes, and should deliver to said Jasper one-half of them, and one of them taking one, and the other another, and so on till all were divided, that then the above obligation should be void."

Rhodes v. Gregory, 2 Haywood N. C. 351 [539],[4] July 1805. "Rhodes took an attachment . . and delivered the same to . . the Sheriff, who seized a negro, and returned upon the attachment, that he escaped."

Marshall v. Williams, 2 Haywood N. C. 405 [613],[5] April 1806. "the complainant borrowed of the defendant's testator, £25, Virginia money, and gave him a bill of sale for a negro man, with an indorsement stating that if the £25, with interest should be repaid on the 25th of December, 1789, the bill of sale should be void; but if not paid . . then Williams should be entitled to the negro . . and should pay £10 more . .

[1] Battle's edition.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

and that if the negro should die in the mean time, the loss should be the complainants;" Held: [614] "He was . . a pledge for the security of the money; was redeemable;"

Lanier v. Auld, 1 Murphey 138, June 1806. "This is to certify that I have sold a negro man by the name of Jim for the sum of one hundred and sixty pounds . . paid by Isaac Lanier; and I doth [*sic*] warrant the aforesaid slave Jim to be sound and healthy, not over twenty five years of age. . . 1796. John Auld. Teste, Fanny Dickson." [139] "The negro Jim at the time of the sale, and long before, was a free-man . . Lanier brought an action of assumpsit"

Held: "The writing signed by Auld contains no warranty that the negro Jim is a slave: . . the word *Slave* is used, but it . . is merely descriptive of the person to whom the warranty of soundness, etc. was to be applied. . . The express warranty as to soundness and age excludes any implied warranty as to other qualities. . . The Plaintiff, however, is not without a remedy; . . leave to amend his declaration by adding a count for money had and received, . . granted"

Governor v. Howard, 1 Murphey 168, July 1807. "an action of debt brought on the second section of the act of 1794, ch. 2, to recover from the defendant the penalty of one hundred pounds for selling to . . [169] Smith a negro slave imported into the state contrary to the . . act, knowing him to have been so imported. . . The defendant . . rests his defence upon this ground, that he was an honest purchaser . . without notice of his illegal importation, and that a sale to Smith under subsequent notice of this fact did not incur the forfeiture."

Held: [171] "unless it appear that the seller has contributed to the evil by some . . connivance at the negro's introduction into the state, he is no offender, he incurs no forfeiture." See same *v.* same, *infra.*

Allen v. Watson, 1 Murphey 189, July 1808. Will: "I give . . unto my . . wife . . six negroes, . . during her natural life, and after her decease to be sold and equally divided among my children."

Governor v. Horton, 1 Murphey 212, July 1808. "an action of debt to recover the penalty of one hundred pounds, for bringing a negro slave into this State, contrary to the act of 1794, ch. 2."

State v. Groff, 1 Murphey 270, July 1809. "The Defendant was indicted for receiving stolen goods, knowing them to be stolen. The principal, a negro slave, had not been indicted; he resided in the county . . and was amenable to the law." Held: [271] "he [the slave] ought to be convicted before the accessory is put upon his trial."

Smith v. Williams, 1 Murphey 426, July 1810. "the negro was unsound . . being afflicted with a rupture."

Governor v. Howard, 1 Murphey 465, July 1810. See same *v.* same, *supra.* "Pending the suit, . . the act . . was repealed; and at the next term . . the Defendant pleaded . . [the repealing act] in bar, . . the Plaintiff demurred;" Demurrer overruled.

Critcher v. Walker, 1 Murphey 488, July 1810. "Complainant . . applied to the Defendant, in . . 1785, to loan to him . . £70, Virginia currency, and that the Defendant agreed to loan the money, provided Complainant would place in his possession a negro woman named Mag, as a security for the money, and to work for the interest thereof: . . [489] the negro woman had had five children since . . that Complainant had in 1797, tendered to Defendant . . £70, . . Defendant refused to accept the money, or surrender up the negroes. . . The Defendant . . averred . . that she was to remain in his possession until the . . 25th . . December [1785], at which time Complainant was to be at liberty to take her back, upon paying the money advanced, without interest: but if Complainant failed . . she was to become the absolute property of the Defendant. That the bond was given to secure the debt in the event of the negro's death before the 25th December; that it was agreed, if she died before that day, the loss should fall on the Complainant; . . a Jury . . found, 1st. That Defendant had kept possession of the bond . . 2d. That £70, Virginia currency, was the value of . . Mag, at the time she was delivered to Defendant in 1785. . . 5th. That Complainant had not paid the money due on his bond," Bill dismissed.

Long v. Long, 2 Murphey 19, July 1811. Will of Lunsford Long, who died in 1809: [20] "I give . . all my negroes . . (except Frank Bibb, whom I wish to liberate on account of his meritorious services, and request my executors to attend to his manumission,)"

Shepherd v. Sawyer, 2 Murphey 26, July 1811. "Shepherd, started a boat loaded with brick, . . down to Davis's bay, a distance of about seven or eight miles; the boat was rowed by a white man and several negroes, among whom was the fellow Jacob, . . A few days after . . a report was circulated that the boat and all persons on board were lost. . . [27] the Defendant [then] offered to insure the negro fellow Jacob for the premium of two and a half per cent. which offer was accepted . . It afterwards appeared that Jacob and all the other hands . . were lost. . . the Plaintiff . . had no interest whatever in the property insured." [26] "The Jury found for the Plaintiff, and assessed his damages to £200." Judgment entered for the plaintiff.

Shober v. Robinson, 2 Murphey 33, July 1811. "an action of covenant, founded upon a bill of sale for a negro fellow named Peter, sold to the Plaintiff . . at the price of £240. . . 'And we do hereby covenant . . to warrant . . the said negro to be a slave.' . . The Plaintiff took Peter into his possession, immediately . . and in April 1809, Peter, claiming to be a free man, instituted an action of assault and battery and false imprisonment, . . [34] at October Term, 1809, . . the Jury found that the negro fellow Peter was a freeman, . . Shober gave notice to Hamilton and Robinson, of the claim which Peter set up . . and of the suit. . . They appeared and employed counsel to defend the suit, and Shober assisted their counsel in making defence; . . Robinson, was present at the trial, and challenged Jurors. After the verdict and judgment . . Shober brought the present suit against his vendors, . . Sho-

ber gave in evidence to the Jury, the verdict, judgment and proceedings in the suit of Peter against him, . . and relied upon them as *conclusive* against the Defendants. The Defendants . . offered evidence to prove that notwithstanding the finding of the Jury in the other case, Peter was a slave, . . The Plaintiff objected . . overruled . . the Jury found that . . Peter, on the day on which Defendants sold him to the Plaintiff, was a slave, . . it was known to Shober, as well as to Robinson and Hamilton, before the trial . . of Peter *v.* Shober, that John Hamilton, then living within the jurisdiction of the Court, could depose to facts, which would shew, that Peter was a slave, . . and that neither of them had the said John subpoenaed as a witness, . . [35] judgment for the Defendants;"

Affirmed: [36] "the fair . . construction of the warranty . . is . . that the Defendants covenanted, that when legally called upon by an action grounded on the warranty, at the instance of the Plaintiff, they would shew that . . Peter was a slave, or . . repair the Plaintiff's loss . . [37] the verdict and judgment recovered by Peter . . ought to have no other effect than merely to shew that the Plaintiff was evicted, and put the Defendants to the necessity of shewing that . . Peter was a slave; . . it is by no means conclusive" [Locke, J.]

Williams v. Jones, 2 Murphey 54, July 1811. "an action of debt on a bond given for the hire of a negro slave. By the terms of the hiring, the Defendant was not permitted to employ the slave on water . . but he . . [55] employed the slave on water, and the slave was drowned. For this he was sued, and a verdict given for the value of the slave; and now being sued upon his bond for the hire, a question arose, whether . . the Defendant be charged only for the time the slave lived."

Held: "He ought not to be relieved from the payment of his bond, because he has thought proper to do an improper act."

M'Gowen v. Chapen, 2 Murphey 61, July 1811. "the Plaintiff hired to the Defendant a negro slave for . . one year, which slave was, at the expiration of the term, returned ruptured, and greatly impaired in value. The Defendant had, . . without the consent of the Plaintiff, hired the slave to a man . . who, with his father, had . . beaten him with such severity as to occasion the rupture . . a verdict for the Plaintiff; . . Judgment for the Plaintiff."

Campbell v. Campbell, 2 Murphey 65, July 1811. Sons "purchased a negro woman for the purpose of waiting upon their mother during her life."

Bateman v. Bateman, 2 Murphey 97, January 1812. [98] "that he had let the Plaintiff have the negro [in 1804] . . in satisfaction of a debt of one hundred dollars, which he owed to him: that as the negro was small, he had agreed to keep her until she was able to do service, or was called for by the Plaintiff."

State v. Washington (a slave), 2 Murphey 100, January 1812. At a county court, held in February 1811, "Washington, a negro slave, was

charged with the crime of rape, . . committed upon [a white woman] . . and was found guilty by the Jury: and at May term . . he being brought to the bar, and it being demanded of him why sentence of death should not be pronounced on him, . . Jones, his counsel, shewed for cause, . . [101] The Court were of opinion, that the causes shewn were not good and sufficient, and sentence of death was pronounced . . His counsel prayed an appeal to the Superior Court, which was denied. He then moved for a writ of error to reverse the judgment, . . disallowed. . . the owner of the slave, made an affidavit setting forth the foregoing facts, and applied . . for a writ of *certiorari* to have the proceedings removed into the Superior Court, and the Judge granted the writ, and also a *supersedeas*; and the case was sent to this Court upon the following points: 1st. Whether it was competent for the County Court, at May term, 1811, to pronounce sentence of death, the conviction having taken place at February term preceding? 2d. Whether the writ of *certiorari* will lie in this case? (and this necessarily involved the question, Whether the County Court acted rightly in refusing the appeal prayed for?) And 3d. Whether a trial *de novo* is to be had in the Superior Court?"

Held, unanimously: "that the County Court had the right of pronouncing sentence of death at May term: and that if a trial was to be had in the Superior Court, it must be a trial *de novo*. . . all of the Judges, except . . Judge Hall, were of opinion, that the slave had the right of appealing" Judge Hall's dissent, *ibid.* 102-107.

Houton v. Holliday, 2 Murphey 111, January 1812. "Taylor, by his will, dated . . 1799, bequeathed to his daughter Lucy, a negro slave, named Harry. In March, 1800, Taylor borrowed of . . Holliday . . one hundred pounds, and to secure the payment thereof, executed the following deed, viz. . . [112] 'in consideration of the sum of two hundred dollars,[1] . . [I] sell . . unto . . Holliday, one negro man, named Harry, . . The condition of the above bill of sale is such, that if . . Taylor . . shall . . pay to . . Holliday . . on or before the 25th day of December next, the sum of two hundred dollars, then the above bill of sale shall be null and void; otherwise remain in full force until . . Taylor do pay . . two hundred dollars.' Taylor died in April, 1800: . . The Plaintiff intermarried with . . Lucy, in April, 1801; and upon the marriage, the executor . . assented to the legacy of negro Harry . . [He] remained in the possession of Defendant from March, 1800, until April, 1803; and it was proved that his services were worth sixty dollars per year. In April, 1803, the Plaintiff paid Holliday the sum for which the negro was pledged, . . and the negro was delivered to him. He then demanded satisfaction for the services of the negro, . . refused . . therefore the Plaintiff brought his suit . . [113] The Jury found a verdict for the Plaintiff . . for . . eighty-eight dollars, estimated as the wages . . from the time of Plaintiff's marriage . . until . . April, 1803, deducting the interest" Judgment entered for the plaintiff.

[1] "Dollars are to be valued at ten shillings each," Act of 1812. 1 Car. L. R. 126.

Nichols v. Cartwright, 2 Murphey 137, January 1812. Deed, executed 1798: "I lend to my sister Absala . . the use and labour of my negro girl . . and her increase, during her natural life, and at her death I give the said girl and her increase unto the heirs of my said sister . . forever." Held: "Absala . . took the negro girl absolutely."

Perry v. Rhodes, 2 Murphey 140, January 1812. Witherington's will: " that my executors hire out all my . . negroes yearly, till . . my youngest daughter comes of the age of twenty-one years, and the money arising . . I give to my wife . . And . . at such time as my youngest daughter comes of the age of twenty-one years, all my . . negroes, and their increase, to be equally divided among my wife " and daughters.

Scott v. Sheriff, 2 Murphey 143, January 1812. "Another *fi. fa.* issued . . on which the Sheriff returned that he had ' executed two negroes, Anaca and Clary, and one bay horse, and that he had not sold for want of bidders.' . . Another *fi. fa.* was sued out . . which the Sheriff returned ' levied on two negroes, Anaca and Clara, . . not sold, for want of bidders.' A writ of *venditioni exponas* was issued . . on which the Sheriff returned ' no sale for want of bidders.' " A new sheriff returned on a later writ of *venditioni exponas* that [144] " no such property was to be found."

Reddick v. Trotman, 2 Murphey 165, July 1812. " the Sheriff . . levied . . on the negro . . advertised, and sold him; and at this sale the negro did not bring as much by seventy dollars as at the sale when Trotman bid him off."

Spruill v. Spruill, 2 Murphey 175, July 1812. Hines's will: [176] " I lend the whole of my property . . to my . . wife . . for the purpose of raising, clothing and educating my children, and also raising the young negroes that are, or may hereafter, be born in my family,"

State v. Flowers, 1 Car. L. R. 97,[1] January 1813. "An indictment . . for Trespass . . [98] November, . . 1810, a Negro woman, the property of Wright Kirby, had taken some cloaths to wash at a creek running through the land of . . Flowers; . . near a quarter of a mile from the house of . . Kirby, . . Mrs. Kirby . . sent the negro girl, Nan then in the possession of . . Kirby . . to help bring up cloaths, and while there, . . Flowers, assisted by . . Hampton, took . . Nan [to whom he had a claim] . . and carried her toward [his] home, contrary to the will of . . Nan; . . after he had carried her nearly three hundred yards, Mrs. Kirby overtook them, . . in attempting to take the girl, . . Mrs. Kirby was once or twice pushed down by defendant and bruised—but that she was not struck, . . and that no force was used towards her, except in preventing her from taking " Nan. Judgment entered for defendants: [99] " great as the anxiety of this Court may be, to discourage . . every act of this nature, yet we cannot conceive that the circumstances of this case, (though affording good ground of a civil action) can afford evidence of a forcible taking by the defendants." [Locke, J.]

[1] Also in 2 Murphey 225.

Mann v. Parker, 2 Murphey 262, June 1813. Action "on the case for a fraud in the sale of a negro child. . . the Plaintiff, who was a speculator in negroes, applied to the Defendant for the purpose of purchasing a . . negro woman and child; the Defendant . . stated his price, and told the Plaintiff, to 'go into the kitchen, look at the negroes and judge for himself.' The Plaintiff continued in the kitchen, while the Defendant . . [263] breakfasted, . . the Defendant asked him how he liked them, and he answered, 'very well.' The bargain was concluded," On the day agreed on for the delivery of the negroes, "the Plaintiff was asked by . . a partner with him in the purchase, what sort of bargain he had made, to which Plaintiff answered, 'I have got a likely wench, and the child is middling.' . . the Defendant had bought the negroes . . at a public sale, about nine months before the sale to the Plaintiff, and at the time of the latter sale, the child was between fifteen and nineteen months old, and . . could not walk, talk or move itself except upon its back, *backwards*. That the Plaintiff shortly after . . took the negroes to South Carolina with others; that a snow fell whilst they were on the road, that the child was neglected by its mother, was attacked with a dysentery, in common with other negroes in company, and when they reached South-Carolina, the Plaintiff could not sell the child, and he gave it away. One witness, who lived in the family of the Defendant at the time the Plaintiff went to examine the mother and child, said, the child appeared to be well and ate heartily, but he thought it might appear to the most common observer, that the child was not altogether right. . . that the Defendant observed on a certain occasion, when he was looking at the child, 'I wish you were on the sand-hills and I had my money for you.'" Verdict for the defendant. New trial granted.

Williams v. Holcombe, 1 Car. L. R. 365, January 1814. A negro boy, "about 16 years of age, . . [366] the defendant and a valuable negro fellow belonging to the defendant, were engaged in defendant's still-house [in 1806], emptying brandy from the runlet . . into a larger vessel, the boy . . holding a candle . . when the spirits took fire and burned him to death and the negro fellow belonging to the defendant,"

Settle v. Wordlaw, 1 Car. L. R. 371, January 1814. Will: [372] "That if Fanny should have three children more, that they belong to . . Sarah and Nancy, two a-piece, including Nanny already given; and all the rest . . to be equally divided between Benjamin and David."

Pearson v. Fisher, 1 Car. L. R. 460, September 1814. In May 1806 the negro [462] "was of the value of two hundred and twenty-five pounds."

Sherman v. Russell, 1 Car. L. R. 467, September 1814. About 1806 a negro was sold by the constable for $549.

Gardner v. Neil, 1 Car. L. R. 492, September 1814. "an action of trespass *vi et armis*, for entering and searching the plaintiff's house, under the pretence of looking for a runaway slave. The defendant justified, under a warrant, and it appeared in evidence, that the slave was not found in the plaintiff's house."

Curtis v. Hartsfield, 1 Car. L. R. 501, September 1814. In 1813 Hartsfield "sold at public vendue, on a credit of six months, a slave named Ben . . at the price of $425,"

Johnston v. Hamblet, 2 Car. L. R. 96, January 1815. "On the day of her marriage, and before it's solemnization, she made a bill of sale to her mother of the negroes . . without the knowledge . . of her intended husband;"

Ragland v. Cross, 2 Car. L. R. 121, January 1815. "This bond was given for the hire of a negro. A few months after . . the negro . . cut his knee pan with a drawing knife. An inflammation took place . . whereupon . . Ragland took the negro to his own house. The knee mortified and the negro died." Held: [122] "an apportionment of the debt cannot be made"

Dark v. Marsh, 2 Car. L. R. 249, July 1815. "an action of debt to recover the penalty under the 4th section of the act of 1791, against harboring slaves. . . [250] The plaintiff proved a title to the two slaves, mother and child, under a bill of sale, and possession of them from February, 1807, until the September following, when she absented herself, with her child, in the night time, taking with her all her apparel, and was the next morning in possession of the defendant, who . . gave notice to the plaintiff of the fact, and said he should retain them until recovered by law; as he claimed them as his father's property. The defendant has had them in possession till 1813, harboring and maintaining them, but in an open . . manner, the woman being the wife of one of his negro men. The plaintiff sued out a writ of detinue for the slaves in 1807, and in . . 1813, recovered them, and damages . . The writ in the present action was sued out in 1809." [249] "The Jury found a verdict for the plaintiff, subject to the opinion of the Court,"

Held: [251] "the maintaining, intended by the Legislature, was *secret* . . there should be judgment for defendant."

State v. Levin (*a negro slave*), 2 Car. L. R. 270, July 1815. "He was convicted of stealing a horse" [271] Held: "judgment in this case must be pronounced under the 10th section of the act of 1741, *Cap.* VIII."

State v. Davis, 2 Car. L. R. 291, July 1815. "the negro ran away [December 1814] . . and . . the defendant knowing the fact, . . feloniously did steal . . and [in less than a month] afterwards did sell him"

Jordan v. Jordan, 2 Car. L. R. 409, January 1816. About 1783 Jordan bought a slave for one hundred dollars.

Nichols v. Palmer, 2 Car. L. R. 436, January 1816. "An execution . . was levied on the slave . . who had been run away for some time before,"

Drew v. Drew, 2 Car. L. R. 437, January 1816. The father said, [438] "that the mother would have a fine brood for the son, provided the son took care of them."

M'Guire v. Blair, 2 Car. L. R. 443, January 1816. "an action on the case for words; . . 'He (meaning the plaintiff) one of our little Chowan justices of the peace, was taken up a few nights ago playing cards with negro Quomana, in a rookery box, and committed to jail,' . . [444] After a verdict for the plaintiff, it was moved, in arrest of judgment, that the words . . are not actionable." Held: they are not.

Haywood v. Craven's Executors, 2 Car. L. R. 557, July 1816. "John Craven . . bequeathed to [his executors] . . three of his slaves, viz. Prince, Hannah, and Grizzy, and their increase, in trust, to have them emancipated . . by the laws of the State, in such manner and at such time, as they shall think fit. He also devised to his said executors the half of Lot . . in trust for the use of Hannah and Grizzy, and a quarter of an acre of land in trust for the use of Prince. To his sister Margaret . . he left his town house, during her life-time, . . together with a plantation and thirty slaves, and whatever else was not given away by the will. . . and bequeaths, after the death of his sister, to his executors, . . twenty nine slaves and their increase, in trust, to have them set free by the laws of the State, in such time and in such manner as they may think proper . . [558] also to his executors after the death of his sister, his plantation tools, and implements of agriculture, in trust for the use of such of the male slaves as were, at the date of the will, of the age of sixteen years or upwards, and for the females of all ages, to hold the same as naked trustees, for the use and benefit of the said negroes and their heirs for ever. The executors are empowered to bind out all the male negroes at sixteen years of age to different trades, until they attain the age of twenty one, when they are to be emancipated: he directs his executors to sell his house and lot in town after the death of his sister, . . and the interest to be collected annually and applied to the use of Prince, Hannah, and Grizzy. He also gives to his executors eight acres of land in trust for Grizzy, and directs them to sell his furniture, or if necessary, his stock for the payment of his debts; and in the event of his sister dying before him, requires his will to be carried into immediate execution; his slaves to be lawfully liberated as soon as his executors can find it convenient to do so. The testator died and his sister Margaret was put into possession of the property, and by her last will . . devised and bequeathed all her property to the complainants Stephen and Dallas Haywood; . . Prince and Hannah were emancipated by the County Court during the life time of Margaret Craven.—Grizzy died a slave."

Held: [565] "the trust attempted to be created by the will of Mr. Craven is void in law, not only as contrary to its general policy, but as repugnant to positive provisions by statute; for the law has pointed out one method only in which slaves can be liberated, act of 1741, c. 24, and the principle on which it is permitted, can by no construction be applied to the case before us. The same act directs the slaves to be sold if the owner sets them free in any other manner." [1]

[1] [564 n.] "The cause was decided by Taylor, C. J., Lowrie and Daniel, J."

Littlejohn v. Underhill's Executor, 2 Car. L. R. 574, July 1816. [575] "that among his testator's negroes was one . . so old and infirm as to be incapable of labour; and that he had set her up to be provided for during the remainder of her life, to the lowest bidder; that . . $100 was the lowest bid; and that accordingly he had paid that sum for this purpose."

Held: [579] "if fair and honest, that it is good. For we consider this as a kind of *charge* upon the estate in favour of the *community,* which in case of a deficiency of assets, is entitled to a preference against the claims of *individuals.*"

Gilchrist v. Marrow, 2 Car. L. R. 607, July 1816. Action "to recover damages for the breach [of] a warranty of soundness contained in a bill of sale, whereby the defendant sold to the plaintiff 'a girl slave, . . about eleven years of age, sound and healthy, and do . . further covenant . . [608] to warrant the right and defend the title of the said slave,'" Held: "These words [sound and healthy] are not . . barely words of description, but aver facts sufficient to maintain this action."

Dyer v. Rich, 2 Car. L. R. 610, July 1816. "after the sale of the slave [for $450], the parties entered into a contract . . that Dyer should convey the slave out of the State and dispose of him in two months; which he avers he performed. . . [611] Rich avers, that the agreement to carry the slave out of the State, was a part of the original bargain, . . and that if Dyer did remove the slave, it was done so evasively that a very short time afterwards he returned, and is now in Dyer's possession."

Administrator of Allen v. Peden, 2 Car. L. R. 638, July 1816. "Detinue for two mulatto children born of a negro woman slave, and reputed to be the children of Allen, who in his lifetime conveyed some property to each of them, and on the back of the deed, expressed a desire that they should be emancipated. After the death of Allen, administration with the will annexed was granted to the plaintiff, and the Legislature, without his consent, passed an act emancipating the children sued for."

Judgment for the plaintiff: "The administrator . . was, in law the owner of the persons emancipated by the General Assembly. The act of emancipation passed not only without his consent, but against it. However laudable the motives which led to the act of emancipation, it is too plainly in violation of the fundamental law of the land, to be sanctioned by judicial authority. We are compelled to pronounce it a nullity," [Cameron, J.]

Dodd v. Hamilton, N. C. Term Rep. 31, July 1816. "the two Hamiltons took a purse and put $12, together with two quarter-pound weights into it, and gave it to a female slave belonging to Noble Hamilton, . . They directed her to go to a certain place on the river, not far distant. She went to the place; the Defendant and Pope lying in ambush not far off. The Plaintiff came . . a short time afterwards. As soon as he came up, a Negro fellow, who was also in ambush, caught him, and called for the others; who came to his assistance. . . [32] Plaintiff . . said the servant owed him a small sum of money, which he had come to get."

West v. Dubberly, N. C. Term Rep. 38, July 1816. [39] "in 1797, . . the slave Ben . . was worth £200."

State v. Jernagan, N. C. Term Rep. 44, January 1817. "an Indictment . . under the Act of 1779, c. 11, §2, . . [45] Jeremiah Deans . . left Waynesborough on the 13th of March, 1816, . . he met Barna Jernagan, . . who . . asked him when he was going to the State of South-Carolina (or to the southward) with negroes. Defendant informed Deans he had five or six negroes lying out, that did not belong to him, who wished to be carried away, and he wished Deans to assist him . . asked Deans the consequence of doing this act? Deans informed him he did not know, but expected it would go hard with him. . . On the 18th of March, he . . met the other Defendant Lovet Jernagan, who informed him Barna wished to see him, . . Deans went to Barna's house, when Barna told him, three of the negroes were out, viz. Amos, his wife, and youngest child, and the other three he could get out at any time. . . Barna informed him the negroes were . . Pender's. . . 20th of March . . Barna informed him three of the negroes were not out. They then agreed to meet . . 22d of March, when Barna was to let him know when the negroes would be ready to start. On that day Barna did not come, but . . Lovet, came, and informed Deans that he was to go with Deans and the negroes to the south. Witness . . sent word by Lovet that Barna must meet him. . . Barna met him and then informed him that all the negroes were out. They then agreed that the negroes were to be sold, and the money to be divided equally between Deans, Lovet, and Barna. He promised to deliver the negroes at a mill-stream . . [46] Deans asked him for a bill of sale. . . Deans wrote it, and was requested by Barna to insert other than the true names of the negroes, as he expected they would be advertised. . . Barna refused to sign it, but said he would prepare one, and bring it with him when he delivered the negroes. Deans informed Pender of the whole transaction, who advised Deans to go on in the business. Deans and Pender had men placed at Smithfield bridge to apprehend the negroes and Lovet, . . Deans went to the mill-stream on the night of the 24th, as agreed on. About ten o'clock at night, Barna and Lovet came to him, and informed him the negroes had taken a scare, expecting a trick, and would not go, unless Deans would assure them that they were really going to the southward, . . Deans then went back from three to five miles with Defendants, . . Barna called 'Bush.' No answer was given. Barna then rode into the woods, and returned with the negro man Amos. He (Barna) and Amos again returned into the woods, and brought the woman and children. Barna put one of the children in the lap of Deans, and Amos, the negro man, put another behind Lovet, on his horse. . . After travelling all night, they were taken at daybreak, by the men placed at the bridge for that purpose. . . [47] Amos had been run away from Pender upwards of nine months, and was out of the actual possession of Pender at the time aforementioned, but in the possession of no other." [44] "the Jury found a general verdict of guilty, against both the Defendants;" Motion for a new trial overruled. On appeal a new trial was granted as to Lovet.

Richardson v. Saltar and others, N. C. Term Rep. 68, January 1817. "an action of Trespass *vi et armis*, . . Saltar, who was a regular Patrol, associated with him the other Defendants, . . who were not Patrols, and went to the plantation of Major Owen, where they found in an outhouse, the negro Simon, whom they called upon for a pass, which he produced, written in these words: 'Pass Simon, or let Simon pass till Monday morning.' It was in the hand-writing of the Plaintiff's wife, but in his name. Saltar told the negro the pass was not a proper one, and ordered him to strip, on which he attempted to escape, and Allen . . caught him, which enabled Saltar to seize and throw down. But Saltar alone was not strong enough to hold him down, and calling for aid, Allen and Singletary struck him, and at length, their united efforts and blows, with a stick and with their firsts, subdued the negro, and he was whipped. A Physician proved, that the temporal artery was divided, and that the negro was much weakened by the loss of blood, from the effect of which he could not probably recover in less than three or four weeks; but the wound was not so serious as to do any permanent injury. . . [69] however, . . the negro was engaged in some business in a smithery, within a few days after he was whipped." [68] "The Jury found a verdict of Not Guilty, as to all; . . motion . . for a New Trial . . overruled . . and an Appeal taken"

New trial granted: [69] "By the Act of 1794, c. 4, the County Courts are authorised to appoint in each Captain's district, a number not exceeding six discreet and proper persons, to be Patrollers. The Act of 1802, c. 15, gives the County Court power to appoint . . such numbers as they please, and to form rules and regulations for them, . . [70] The act of 1794 is not repealed, but enlarged . . It does not appear . . that the County Court of Bladen made any rules . . under the authority of the last act; . . from a full . . examination of the two acts, [I am of opinion] that . . Saltar, had not the right to exercise the powers of a Patroller by himself, and as the other Defendants were present, aiding and abetting him in an unlawful act, they were all guilty of a trespass." [Daniel, J.]

State v. Sparrows, N. C. Term Rep. 93, January 1817. "The Defendants were indicted under the Act of 1779, to prevent the stealing of slaves, . . the Jury found a verdict of . . guilty on the second [count], [98] Judgment for the State."

Cummings v. MacGill, N. C. Term Rep. 98, January 1817. See same *v.* same, p. 34, infra.

Spence v. Yellowly, N. C. Term Rep. 114, January 1817. "Detinue for a Slave. . . Boon, the former proprietor of the Negro . . made a fraudulent conveyance of the Negro to the Plaintiff his mother. The Defendant afterwards obtained a judgment against . . Boon, and . . engaged the Constable to levy an attachment . . on negro Jess, who was then a runaway, and at the Defendant's house, . . and the Negro sold under it," "When the officer was crying the Negro, a person made a bid. The Defendant asked him if he was his enemy. That his object

was to purchase the Negro for the benefit of the debtor's wife ['in a destitute situation']. That . . the person desisted from bidding. That the value of the Negro was . . 350 dollars; to which amount the said bidder would have bid. He was knocked off to the Defendant for $150 1 [*sic*]. . . [115] The Jury . . found a verdict for the Defendant."

"rule for a New Trial discharged." "there appears nothing to impeach the honesty of the Defendant's title, . . he stands in the shoes of both a creditor and purchaser." [Seawell, J.]

Laspeyre v. M'Farland, N. C. Term Rep. 187, July 1817. "a marriage settlement . . whereby this slave among others, was conveyed to . . a trustee, to permit the wife of the Plaintiff to have the labour and profits, and to allow the slave to be under the direction of the Plaintiff."

State v. Walker, N. C. Term Rep. 230, July 1817. "The negro slave . . belonged to . . Guy. He ran away on Sunday night, and on Monday about 12 o'clock he was apprehended at Peter Hairston's, nine miles distant from Guy's. Within a few minutes after the negro was apprehended, Walker, the prisoner, came to the house of Hairston, and was requested by Hairston to take the negro home. Walker agreed to take him; and Terry, the overseer of Hairston, tied his arms above the elbows to a stick across his back, and in this situation he was delivered to Walker, who was on foot and walked with the negro. At the distance of about six miles from Hairston's, in Wall's lane, the negro fell down. Wall came out from his house: Walker assisted the negro to get up and the negro walked towards the gate: but before he reached the gate, he fell twice, each time falling on his face. The negro asked for water, which was given to him, and he drank more than usual. Walker then asked Wall if he had any spirits? He said yes, and brought some. Walker took a dram and gave one to the negro. He then requested Wall to give the negro something to eat, the negro saying he had eat but very little for several days—Wall gave him some bread. After resting a little time at Wall's gate, Walker started with the negro. It was early in February and the day very cold, and the sun about one and a half hours high in the evening. Wall was doubtful whether the negro was sick or deceitful; but did not hear Walker give any opinion, further than saying to the negro, 'He had come on very well, until he had gotten to Mr. Wall's Lane; that he had there fallen down, and if he did not go on better, he should be under the necessity of compelling him.' At the distance of six hundred yards or thereabouts from Wall's house, Walker and the negro passed Webster and his son; Walker had two untrimmed switches in his hand. He was asked by Webster, 'Whom he had there'—he answered, 'A runaway, a damned sullen fellow, who would not go along; and he would kill him, if he was his own, but he did not like to be hanged for killing a negro.' The negro was walking slow and Webster thought, appeared weak. Having passed Webster a little distance, Walker gave to the negro two stripes with a brushy switch which he had in his hand, and having gone to the distance of an hundred yards or thereabouts, Webster looked back and saw the negro down in the road, and Walker whip-

ping him, he supposes with the switches, which he had in his hand, when he passed him. Webster thought Walker gave the negro an hundred stripes, but he could not speak with any certainty as to the number—The negro had on [232] a great coat and those stripes were given whilst he lay on the ground. The negro and Walker were then distant about three hundred yards from Foy's shop. Foy heard a noise down the road, and he told Williams to go and see what was the matter. Williams went and found the negro standing in the road and Walker a few yards from him. After some conversation with Walker about the negro and Walker saying he was a sullen fellow and had fallen down and would not go along, the negro started and walked about fifty yards, when he fell down on his face. As soon as he fell, he turned his head, so as to take his face from the ground; and Walker having an untrimmed Gum-switch in his hand, came up and applying both hands to the switch, struck him with it twice, violently, across the face. The switch was nearly an inch in diameter at the butt end. Then taking one end of the stick tied across his back he turned him over and dragged him by the end of the stick about six feet. The negro then said, 'Pray, sir, untie me.' Williams advised Walker to untie him: Walker refused. Walker and Williams then assisted the negro to get up, and the negro walked a short distance and fell again on his face. Walker stepped up to him and kicked him on the hinder part of the neck with violence, and immediately kicked him on the side of the head with like violence; which last kick turned his face from the ground, so that the side of the head lay on the ground. Upon receiving the last kick, the negro appeared to suffer a violent emotion in his countenance and in all his body. Walker then cut the string from one arm and partly cut it from the other. He requested Williams to untie the string, which Williams did with difficulty, as his fingers were benumbed with cold. Walker took the string, put it around the negro's neck and gave it a jerk, which raised the head a little from the ground and the negro's under jaw was observed to fall. Williams had a horse, and Walker proposed to put the negro on the horse and take him to the [233] shop; Williams at first, objected; but they put up his breast on the saddle. Having gone about 20 yards, Walker walked round the horse and Williams asked him, 'How the negro looked.' Walker answered, 'The scoundrel is holding his breath.' They proceeded about 80 yards further and Walker went round the horse, and Williams again asked him, 'How the negro looked?' Walker answered, 'The rascal is still holding his breath.' They then determined to take him down, and Foy and his son having come up, assisted in taking him to the shop, where he was placed on a plank. Williams thinks the negro never breathed after the second kick aforesaid on the head. Whilst the negro was on the saddle, Williams observed that he thought he was dying: Walker answered that he was only deceitful. Williams thought it was about 20 minutes from the time he came up until the negro was untied. That the negro was very weak and that keeping him tied was unnecessary. He thought that a child of seven years old could have managed him. Walker is a healthy man, aged about sixty years. The negro was a stout fellow

aged about twenty one years. After placing the negro on a plank in the shop, Walker observed that he believed he was dead; and immediately went on to his owner Mr. Guy. He told Guy that his negro was at Foy's shop, but did not mention to him that the negro was dead. Guy took irons to put on the negro. And on the way to the shop, Guy observed, that he feared the negro would be gone before they reached the shop: Walker then said, he expected he would not, and that he feared he was dead. He did not inform Guy . . of his ill-treatment to the negro. . . The negro died on Monday evening, and on Wednesday an inquest was holden. Several of the jurors . . [234] were of opinion that the negro's neck was dislocated, and that one of his eyes was destroyed. There was a dent in one of his temples, . . a wound across the forehead and some of the witnesses thought it was produced by the stroke of a hickory: others that it was occasioned by his fall on the ground. The upper lip was swelled and some blood oozed from the gums. He was stripped and examined, but there was no appearance of any injury on any other part of his body. . . the Judge charged the jury that the prisoner was guilty of murder, or guilty of no offence at all. . . The jury found the prisoner guilty of murder, and a new trial was moved for on behalf of the Prisoner, . . motion was disallowed" Rule for a new trial discharged. ["The prisoner was pardoned by Governor Miller."]

State v. Neese, N. C. Term Rep. 270, January 1818. The defendant was found guilty of a libel: he [271] "did . . nail up," "on a tree on the side of the Public Road," [270] "Notice to all Persons . . as I was going on I discovered A man and woman along the field side . . on [*sic*] was a Negro Seeing that they were so busily engaged I lit of [*sic*] and made toward them . . and Behold it was Betsey . . the Daughter of Miss . . and a Negro boy"

Armstrong v. Simonton, 2 Murphey 351, July 1818. "when Simonton was on a visit in North-Carolina, the Plaintiff [his father-in-law] . . gave or loaned the negro woman, then a girl to Simonton and he carried her to Georgia on his return."

Wright v. Lowe's Executors, 2 Murphey 354, July 1818. "Isaac Lowe was the owner of several slaves which by his will he directed his executors to emancipate after the death of his wife; that the wife was dead, some of the slaves having been emancipated by the County Court during her lifetime, with her consent, that the Court refused to emancipate the rest,"

Held: [356] "as to the devise to the executors in trust to liberate, the trust is void and the next of kin are entitled,"

Cummings v. MacGill, 2 Murphey 357, July 1818. "Replevin for a slave.—In December 1814, . . the Sheriff having an execution against Smith, levied it on the negro, and on the 24th of December exposed her to sale at Bladen Court House to the highest bidder, she being then present. Defendant was the last bidder at the sum of $908 15.[1] The

[1] $90.15, in same *v.* same, N. C. Term Rep. 98.

Defendant not having the money, the Sheriff . . allowed him until the next day to make payment; Defendant failed to make payment . . and a few days afterwards [the Sheriff] gave to Plaintiff, who was the next highest bidder . . a bill of sale for the negro, without having exposed her to public sale again. Soon after, Defendant obtained possession of the negro, by going at night to a place where this negro and others had assembled to dance," Judgment for the plaintiff.

Horton v. Reavis, 2 Murphey 380, July 1818. "*Case* for words spoken.—The declaration charged that Defendant had said, the wife of Plaintiff, while single, had sexual intercourse with a negro, *per quod* she lost a marriage with one Waddy, who was addressing her, and had offered her marriage. The evidence offered was, that Defendant had said there was a report that the Plaintiff's wife (then sole,) had had connexion with a man of the wrong colour; and upon being asked . . [381] whether he believed the report to be true, the Defendant answered, he did not know well how to do so, as she was a clever, smart, ingenious girl. . . and further, it was proved that there was in circulation such a report . . The jury found for the Defendant,"

State v. Dick (*a slave*), 2 Murphey 388, July 1818. "Indictment for a Rape in the following words: The jurors for the State, upon their oath present, that negro Dick, (the property of Mrs. Blount) . . on the twenty first day of July, . . one thousand, eight hundred and seventeen, . . upon . . spinster, . . feloniously, did make an assault, . . against the peace . . of the State. The prisoner was found guilty, and the case was transmitted to this Court . . to determine whether any . . judgment shall be pronounced." Judgment arrested: "the indictment must . . conclude *contra formam statuti.*" [Seawell, J.]

Campbell v. Staiert, 2 Murphey 389, July 1818. "Trespass against Defendant for cutting timber on Plaintiff's lands. . . a slave, the property of Defendant, had cut the timber;" [390] "the Defendant did not command or assent to the trespass" [389] "verdict for Defendant. Rule for a new trial refused,"

Affirmed: [390] "a man is liable for trespasses committed by his cattle . . but he is not bound to keep his slaves confined, and if he were, it would be a monstrous thing to charge him with their depredations." [Taylor, C. J.]

State v. Jim (*a slave*), 3 Murphey 3, January 1819. Jim was indicted, in 1818, for stealing a banknote from "the dwelling-house . . no person being therein . . [4] contrary to the form of the statute" "The Jury found a special verdict, affirming the guilt of the prisoner, provided the Court should be of opinion that he could be legally guilty . . under the act of 1806, ch. 6; but if . . not . . and it was necessary that the indictment should conclude . . also against the form of the act of 1811, ch. 11, making bank notes a subject of larceny, then they found the prisoner not guilty."

Held: the indictment should conclude against the form of the *statutes.*

State v. Cherry (a negro slave), 3 Murphey 7, January 1819. The indictment charged that Abraham, a negro slave belonging to Howell, assaulted Scott, on November 4, 1817, with an axe, giving him a "mortal wound, . . of which . . [he] then and there instantly died: . . And that negro slaves Ben and Cherry . . were . . present, and did . . aid and abet" [8] "the 'then and there' are not repeated as to the blow itself." Held: [10] "Let the reasons in arrest of judgment be overruled."

State v. Barna Jernigan, 3 Murphey 12, January 1819. For facts, see same *v.* Jernagan, p. 30, *supra*. The indictment charged "that Barna Jernigan . . [13] a certain male slave named Amos, . . did steal, . . contrary to the Act"[1] "The prisoner was found guilty; and it being asked why sentence of death should not be pronounced against him, Gaston, Stanly and Mordecai shewed for cause, that . . the prisoner was entitled to the benefit of clergy;" Held: he was not.

Williams v. Howard, 3 Murphey 74, May 1819. In September 1806, [75] "notice was given by Howard to the Sheriff, that he was to purchase the negroes [Sylvia and her child] as the friend of Complainants; and they were purchased accordingly at a price little exceeding one half of their real value." He had agreed "that after the sale, the Complainants should have the possession of the negroes until 25th December . . and if the money . . were not paid to him by that time, he should take . . Sylvia . . and have the benefit of her labor for the interest of the money, until the money should be paid." On November 19 [78] "the Defendant took them away. A tender of the money was made on the 21st November . . which he refused to accept, claiming an absolute title in the negroes."

Held: [80] "the Defendant should be compelled to replace things in the state . . from which his fraudulent conduct removed them. . . With respect to other chattel property, justice may be done at law by damages for nonperformance, and therefore equity will not interpose: But for a faithful or family slave, endeared by a long course of service or early association, no damages can compensate;" [Taylor, C. J.]

James's Executors v. Masters, 3 Murphey 110, May 1819. Charles James "bequeathed to his wife Comfort James, all his estate during her natural life; and after her death he directed all his negro slaves to be emancipated, declaring that he wished to give to them their freedom as a reward for their faithful and meritorious services; and he requested his executors to use their utmost endeavors with the County Court . . [111] to obtain a license to emancipate them. . . the widow . . kept them during her life. She died . . 1816, having . . bequeathed all her property to . . the wife of the Defendant, . . The Defendant took the negroes, and . . the surviving executors of Charles James, brought an action of detinue"

Held: [114] "the Plaintiffs are entitled to recover." "In what manner the executors are to dispose of the property, is not . . before the

[1] Act of 1779, ch. 11.

Court . . however much it may be desired by those interested . . they are not parties to this suit, and their rights cannot be adjudicated." [Henderson, J.]

State v. Barrow, 3 Murphey 121, May 1819. "The Defendant was charged as putative father of a bastard child, and bound for his appearance at the County Court; where he moved for leave to plead, that the woman . . was of mixed blood, within the fourth degree, and that she ought not to swear against him. The motion was overruled, and the Defendant appealed"

Held: [122] "that this case be remanded . . that an issue be made up . . and the Defendant be at liberty to allege and prove the incompetency of the witness." [Taylor, C. J.]

Smith v. Daniel, 3 Murphey 128, May 1819. Nelly was levied on and sold at public sale in 1813 for 65 *l.*

Bulls v. Brooks, 3 Murphey 133, May 1819. "shortly after the marriage [of Bulls's daughter to Watson in 1807], Bulls told the negro Nanny that she must go to Watson's, and wait upon his daughter; that he would not part her from her husband, but she must go and stay until he got another to send in her place. . . George went into Watson's possession . . from three to six months after the marriage;"

Held: [134] "a parol gift had been made by Bulls to Watson;" [1]

Sheppard v. Murdock, 3 Murphey 218, May 1819. "Complainants filed their bill to redeem a negro slave . . mortgaged . . many years before . . December, 1784, . . Sheppard . . borrowed 30 *l* from . . Willson, and to secure the payment thereof executed . . [219] a deed . . 'I, . . Sheppard, . . have . . sold, . . and delivered, one negro boy Limus, about eight years of age, unto . . Willson, for . . thirty pounds, . . Provided . . that if . . Sheppard . . shall . . pay . . Willson, the aforesaid sum . . with lawful interest . . on or before the 20th day of March, next . . then . . the title to the said negro boy . . shall revert to . . Sheppard, . . I acknowledge to stand the risk of the within negro's life, . . Wm. Sheppard.' . . May, 1790, . . Willson assigned the said deed to . . Murdock, who took possession of . . Limus . . In the fall of . . 1790, Murdock called upon Sheppard, and requested him to take . . Limus and pay him the thirty pounds with the interest . . Sheppard refused. He . . was in good circumstances, . . In February, 1805, Sheppard tendered the money . . with the interest . . [220] and demanded the negro, and seven hundred dollars for his services whilst in Murdock's possession. Murdock refused"

Held: [222] "Sheppard may . . redeem upon paying the principal and interest due on the mortgage, . . Murdock must account for a moderate hire . . and be allowed for all expenditures made on the slave . . and for loss of time."

State v. Brown, 3 Murphey 224, May 1819. "The Jurors . . present, that . . Brown, . . shop-keeper, . . [225] on the [Lord's] day, . . sold . . divers goods, wares and spirituous liquors, to negroes and

[1] Act of 1806.

others," "The Defendant submitted;" Judgment arrested: "This offence, as charged, is not punishable by indictment,"

Walker v. Walker, 3 Murphey 265, May 1819. [267] "the [twenty-four] negroes bequeathed . . were at the time of the death of the testator [1813] of the value of 7,920 dollars; and . . April, 1818, they were of the value of 10,692 dollars;"

Bell v. Beeman, 3 Murphey 273, May 1819. In 1801 Bell borrowed two hundred dollars from Goff, and "placed in the hands of Goff a negro slave . . upon a parol agreement, that upon re-payment . . the said negro should be returned . . and that until that time Goff should . . have the benefit of his labour in lieu of interest." Two days after Bell's death, in 1803, Goff sold the negro, then about eight years old, to Beeman for two hundred and thirty dollars, Beeman having no notice of the pledge by Bell to Goff. In 1806 the complainant, to whom Bell had bequeathed the slave, upon condition that he would redeem him, [275] "tendered to Goff two hundred dollars and interest, and demanded the negro." He was [274] "informed by Goff that he had sold the negro to . . Beeman, . . the yearly value of the negro's labour was worth much more than the interest of the money." In 1816 [275] "the Complainant tendered four hundred and ninety dollars in bank bills [to Beeman], and demanded the slave, which was refused to be delivered up."

Bill dismissed: Beeman's [277] "adverse possession for more than three years, is a good defence"

Watford v. Pitt, 3 Murphey 468, May 1819. "twenty years before, Stephen was given by parol by . . Watford to his son, the Plaintiff, . . aged one or two years." A few years later Watford sold the slave to Holloman, [469] "who had express notice of the gift; and . . declared . . that on that account he would not give the full value."

Held: "the gift . . was not by deed, and . . void against creditors and purchasers under the act of 1784, ch. 10."

State v. Sparrow, 3 Murphey 487, May 1819. [488] "on Saturday morning a negro boy belonging to one of the Jury was seen to carry a vessel containing victuals . . to the window, and hand it to one of the Jury:"

Gibbons v. Dunn, 3 Murphey 548, May 1819. Dunn's will: "if the widowhood of my wife should terminate before her natural life, . . negro Nell shall remain in this place for the support of my children who may live here." See same *v.* same, p. 74, *infra.*

Blackledge v. Singleton, 3 Murphey 597, November 1819. The testator, Benjamin Blackledge, "recommended his negro woman Jenny [excepted from his residuary estate] . . to the particular care of his brother . . and requested that he would not remove her from the plantation where she lived, unless by her consent, and in case she should, by old age or infirmities, need support, that it be drawn from the hire of certain negroes," Codicil: [598] "that his negro woman Milly be left with, and precisely as his negro woman Jenny was left in his will." After the death of the testator, Milly had a child. Held: her child belongs to the next of kin.

Harkey v. Powell, 1 Hawks 17, June 1820. [18] "in 1789, . . eighty pounds was something less than the value of Grace; that at the time of filing the bill [1815], she and her increase [six children] were worth greatly more than that sum;"

State v. Scott, 1 Hawks 24, June 1820. The prisoner was [25] "charged with the murder of 'a negro man slave, . . the property of . . Marshall;' . . The deceased was slain with a dagger about ten o'clock at night. One ground of defence . . was, that he, the prisoner, was insane" He was convicted. Motion for a new trial overruled. [26] "The prisoner then prayed the benefit of clergy; but the Court refused to allow it, and passed sentence of death on him;" Affirmed.

State v. Tackett, 1 Hawks 210, December 1820. "an indictment for the murder of Daniel, a slave; . . the deceased had a free colored woman for a wife who lived on the lot of one Richardson, a carpenter, . . the deceased was generally there of nights: that the prisoner was a journeyman in the employment of Richardson, . . that on the night when the deceased was shot, he, Richardson . . was awaked by the firing of a gun, and soon after heard some person come into the room and set something down like a gun, where his generally stood, . . [211] he heard groans . . as of one injured: . . that about a week or ten days before, the prisoner told Richardson of a fight between himself and the deceased . . and said that he would kill him; but the prisoner was drunk . . In consequence of this threat, and of the rumour and belief that the prisoner kept the deceased's wife, Richardson discharged him; but took him back again in a few days, . . [212] two or three weeks before the homicide, the deceased had said . . that the prisoner kept his wife, and shewed a large stick with which he said that he had given the prisoner a beating; and that if the prisoner did not let his wife alone, he would kill him; . . about a week or ten days before the homicide, the deceased was . . standing at Richardson's gate, and . . said . . that the devil had been to pay there; that Richardson had whipped him and driven him off . . but he would be the death of Richardson or Tackett one. . . about ten days before the deceased came to his death, he came up to a work-bench where Tackett was working in the street . . a fight . . took place . . [213] the next day or the day after, he [witness] found the deceased lying in wait in Richardson's garden with two stones in his hands, and . . said that he thought the witness had been Tackett, and he had intended to knock his brains out: that after dinner of the day of the homicide . . the deceased . . said, that he did not intend that Tackett and Lotty (the deceased's wife) should out-do him; that she had behaved so meanly that he would not have her, but that the prisoner should not take her away from him; . . if he did not let her alone, he would kill Tackett or Tackett should kill him. The prisoner then offered to prove, that the deceased was a turbulent man, and that he was insolent and impudent to white people; but the Court refused to hear such testimony, unless it would prove that the deceased was insolent . . to the prisoner in particular. In the charge to the Jury, the Court instructed them, that under the

act of 1817, this case was to be determined by the same rules and principles of law as if the deceased had been a white man; . . The Jury found the prisoner guilty of murder; a motion was made for a new trial, . . [214] but it was refused, and sentence of death was pronounced"

New trial granted: I. [216] "the temper and disposition of the deceased, and his usual deportment towards white persons, might have an important bearing" on the question of "the degree of provocation received by the prisoner." II. The act of 1817 [217] "had no design beyond that of authorising a conviction for manslaughter, in cases where a slave was killed under a legal provocation. If, before that time, a white person had killed a slave under such circumstances as constituted murder, he might have been convicted and punished . . but if the homicide was extenuated to manslaughter, no punishment was annexed to that offence, and the accused persons were uniformly acquitted. It seemed just to the Legislature, that the manslaughter of a slave should be punished in the same manner with that of a white person. . . it is all they intended to provide for. They did not mean to declare that homicide, where a slave is killed, could be only extenuated by such a provocation as would have the same effect where a white person was killed. . . where slavery prevails, the relation between a white man and a slave differs from that, which subsists between free persons; and every individual in the community feels and understands, that the homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person." [Taylor, C. J.]

Walker v. Campbell, 1 Hawks 204, June 1821. Orme's will, 1818: "I . . direct that my executors . . sell all my negro slaves, except Katy, and Maria, and her child, and . . that with the proceeds thereof, after paying my debts, that they redeem my bank stock,"

Denby v. Hairston, 1 Hawks 315, June 1821. [316] "March, 1818, the Defendant came to the land with his slaves, and entering . . against the will of the Plaintiff, tore down his fences, . . ploughed up his yard"

Tate v. O'Neal, 1 Hawks 418, December 1821. An action "against the Defendant and two others for beating the slave of the Plaintiff. The Defendants were the regular patrol of the Morganton district, . . and finding the slave not on his master's premises, they enquired for his pass or permit from his master; whither he was going; what was his business? . . [419] the slave returned no answer; and the Defendants, together with one other patrol, composing a majority of those officers in that district, after consultation, inflicted on the slave fifteen lashes, having first made his body naked, and confined him to the whipping-post. There was contradictory evidence as to the severity of the punishment; and one witness swore that some animosity existed between the family of one of the Defendants and the Plaintiff. The Court instructed the Jury . . that if they found the whipping to be so excessive, as to manifest that it was not inflicted with the view of executing the law, but with the intention of gratifying malice against the owner . . such owner would be entitled to recover; but . . they would not examine with the most scru-

pulous exactness into the size of the instrument, or the force with which it was used, as some discretion must necessarily be allowed patrols; . . that if the mode adopted . . in whipping the slave, was such as masters commonly adopted, they had not acted unlawfully; . . Verdict for Defendants, . . judgment, and appeal." Affirmed.

State v. Ben (the slave of Herrington), 1 Hawks 434, December 1821. "the fact of burglary was proved by the testimony of a white man, a witness above suspicion, but the only evidence to shew any agency therein on the part of the prisoner, was given by a *slave*, and that evidence was direct and positive. The counsel for the prisoner contended that such evidence was insufficient to convict . . because not supported by '*pregnant circumstances*'[1] The Court instructed the Jury, . . that there was no positive rule of law which should prevent them, if they believe the testimony of the slave, from finding a verdict of guilty . . although his testimony was not supported by other proof. The jury found the prisoner guilty; a motion for a new trial was overruled, and sentence of death passed,"

Affirmed: the act of 1741, passed a few years after a slave insurrection [in 1738], vested jurisdiction, in trials of slaves for capital offences, [435] "in three justices and four freeholders, who might be hastily collected at the court-house, and proceed to the condemnation and execution of a slave, without indictment, jury, or notice to the owner. . . and, since every other form by which the Law aims to secure an impartial trial was withdrawn from slaves, the Legislature prescribe, that rather more evidence shall be demanded for their conviction, than is in general necessary. . . [436] When the act of 1793 extended the trial by Jury to slaves, I strongly incline to believe, that it was a virtual repeal of so much of the above section, as differs from the Common Law rule of evidence; . . The act of 1816, giving the Superior Courts exclusive jurisdiction of capital crimes, committed by slaves, extends to those persons the full benefit of a Common Law trial, . . The first section directs, 'that the trial shall be conducted in the same manner, and under the same rules, . . as trials for free men are now conducted.' . . [437] If the grand Jury cannot find a bill upon the testimony of one credible witness, without pregnant circumstances, nor the petit Jury convict, then the trial is not conducted 'in the same manner . . as trials of freemen' . . in the act [of 1802] 'to prevent conspiracies and insurrections among the slaves,' the rule of evidence [of 1741] is re-enacted in relation to these crimes. Now the act of 1741 . . if it were not repealed by 1793, must have been in force in 1802. The act last noticed was passed soon after some disturbances had arisen among the slaves in the lower part of the State, and the clause was probably re-enacted for the purpose of tempering that excess which public excitement had produced in the trials for these offences. Upon the whole, I think the conviction is right." [Taylor, C. J.] Judge Hall dissented: [441] "Being slaves, they had no will of their own, and a humane policy forbade that the life of a human

[1] Act of 1741, ch. 24, sect. 48.

being (one of themselves) should be taken away upon testimony coming from them, unless some circumstance appeared in aid of that testimony."

State v. Poll and Lavinia (slaves), 1 Hawks 442, December 1821. " an indictment against the prisoners and one John Skinner, for the murder of Samuel Skinner, by poisoning. The bill was originally found by a grand Jury, of the county of Washington, and after . . the plea of not guilty, recorded severally for each; the solicitor for the State, and . . Skinner, consented to remove his case to the county of Chowan for trial; and the owner and counsel of the other two prisoners consented . . to a similar removal . . The indictment against Poll and Lavinia came on to be tried in Chowan Superior Court, . . The poison alleged to have been given, was white arsenic; . . the prisoners (who were domestics in the family of Samuel Skinner,) . . spoke of having put something into Samuel Skinner's soup, which would kill him and all others who partook of it. Lavinia then advised Poll to carry some of that which they had put into the soup, into the house; and if, during the night, Samuel Skinner called for water, to put some in the water, adding 'that is the way *he* said to do it;' and Poll accordingly took down from a shelf something wrapped in paper, and . . [443] placed it in her bosom. On examination . . Lavinia said, that the *he* . . was John Skinner, who had given to Poll something like lime, but it was heavier. The solicitor for the State then offered to prove, by a declaration of John Skinner, that he had purchased . . arsenic just before, under the pretence . . of curing the horse of one Marina, . . and Marina then proved that he had never requested [it.] . . Samuel Skinner . . said he was poisoned, and as he believed, by Poll, who had given him something in his food and drink. The Jury found the prisoners guilty, and a new trial was moved for; . . refused; . . then moved, in arrest of judgment, that the Superior Court of Chowan had not jurisdiction. . . overruled, and sentence of death pronounced," Judgment of death reversed, and new trial granted: I. [444] " as to the declarations of John Skinner, I know of no principle upon which they could be received as evidence against the prisoners. . . [II.] it was not competent for the owner of the slaves and their counsel, to consent to the removal of this [cause]." [Taylor, C. J.]

State v. M'Dowell, 1 Hawks 449, December 1821. [450] " M'Dowell, after some conversation with James and the slave, (who were children,) seized the slave [the property of James's sister] and placed her on the horse of Gray, and Gray carried her off."

State v. Rutherford, 1 Hawks 457, December 1821. " one of his [Magness's] slaves had been much injured by the bite of a very fierce dog, owned by Rutherford; . . Magness . . requested Spurlin [in his employ] to take a gun, go to Rutherford's house, and tell him that if he would permit his dog to be killed, he . . would be satisfied, . . the dog . . attacked him; . . he fired and . . Rutherford . . encouraged his dog, and ordered his negroes to pursue . . Rutherford . . wounded Spurlin in the head."

State v. Goode, 1 Hawks 463, December 1821. "an indictment for buying and receiving of a negro slave Essex certain goods of the value of six pence, which Defendant knew Essex had stolen, . . Essex had never been prosecuted, but was running at large, amenable to process."

State v. Farrier, 1 Hawks 487, December 1821. Challenge to fight a duel: "1820. . . [488] you called on me to explain why I should say that I would as soon vote for Jim, the barber, as you"

Reel v. Reel, 2 Hawks 63, June 1822. [67] "he said he had been to consult a negro conjuror on his complaints. Reel said the negro told him he was 'tricked' by persons who wanted his property, and told him also where the stuff was which tricked him. . . [71] he had made a smith of one of his boys." Witness talked to Reel [72] "about a negro doctor in Wayne county. Reel several times proposed they should travel together, sometimes . . to Cato Sabo, the negro doctor," Another witness: "He started on a journey . . when he returned, he said he had been to Wayne county." [73] "Reel owned three slaves, a horse, and two yokes of oxen." [74] "When Reel had corn to sell, he would refuse to dispose of it, until his negro told him he could spare it." [75] "Reel never was a bright man and drank very hard."

State v. Lewis (*a slave*), 2 Hawks 98, June 1822. "September term, 1821, . . two bills of indictment against the prisoner were found by the Grand jury—the one for burglary and larceny, the other for a robbery. . . were for the same goods . . [99] and there was but one taking. . . the prisoner was found guilty of the larceny, and not guilty of the burglary; . . the Attorney-General did not pray any judgment, . . At March term, 1822, . . the Attorney-General directed a *nol. pros.* to be entered on the indictment, . . but the Court . . refused . . The Attorney-General then moved to arraign the prisoner on the indictment for robbery; this also was refused by the Court until the first indictment should be disposed of, and on the refusal of the Attorney-General to pray judgment on the first indictment, the Court quashed the indictment for robbery. On motion of prisoner's counsel, his clergy was allowed him on the conviction for larceny, and, on the further refusal of the Attorney-General to pray judgment, the prisoner was ordered to be discharged;" Affirmed.

Huckaby v. Jones, 2 Hawks 120, June 1822. Will of Collier Hill, who died in 1799: "I . . bequeath all my slaves to four men, namely, Hill Jones . . to Edmund Jones . . to Stith Parham, . . of Virginia, and to Richard Graves of the Methodist church, in the last mentioned State, to be their lawful property, and for them to keep or dispose of, as they shall judge most for the glory of God, and good of said slaves; but in case either of those men should be dead . . before they get the said negroes . . I do . . bequeath the said slaves to those . . who may . . live to get the said negroes into possession,"

Held: [121] "I infer that the legatees named were trustees only, and that the purpose of the trust was, to effect an emancipation of the slaves.

This has been held to be an illegal trust, and the persons appointed to execute it, hold . . in trust for" the next of kin. [Taylor, C. J.]

Jones v. Loftin, 2 Hawks 199, December 1822. The sheriff, as agent for the plaintiff, on whose negroes he had levied, offered the two negroes, who were about 45 years of age, to the defendant for $400, at a credit of six months, and the defendant, "after having seen the negroes and made enquiry into their characters, agreed to take them . . It was thought necessary . . that the Sheriff should expose [the property] . . to public sale, . . they were struck down to the Defendant at . . $230, not however before he had declared . . that he considered himself bound to pay $400 . . A few days after the sale, the Defendant brought the negroes to the Sheriff, requesting him to take them back, and alleging that he was defrauded; this the Sheriff declined doing, . . [200] Plaintiff [also] refused . . The Defendant then . . paid $230, . . afterwards sold [the property]for $230. . . One of the negroes was sickly in appearance, the other was a remarkably good servant, but indolent. . . On the trial below, the presiding Judge instructed the Jury, . . this was not a defect which diminished her value, because it might be remedied by correction." Verdict and judgment for the plaintiff, who had brought the action "to recover the difference between the sum contracted to be paid, and the amount of the bid." Affirmed.

Ufford v. Lucas, 2 Hawks 214, December 1822. In 1818 [215] "Dukes was instructed by Ufford to bid to the amount of $375 for the negro, . . After the sale, Ufford requested witness to ascertain what price could be obtained for the negro from a trader in slaves then in the place."

Gilky v. Dickerson, 2 Hawks 341, June 1823. [342] "In September, 1820, Alley carried off the property [negroes] to Tennessee." [1]

State v. Reed, 2 Hawks 454, June 1823. "an indictment for the murder of a slave, which concluded *at Common Law*. The prisoner was found guilty, and moved in arrest, because of the insufficiency of the indictment. . . overruled and sentence passed, from which the prisoner appealed."

Held: [457] "judgment of death should be pronounced" "There is no statute on the subject, it is the Common Law, cut down . . by statute or custom, so as to tolerate slavery, yielding to the owner the services of the slave, . . but protecting the life and limbs of the human being; and in these particulars, it does not admit that he is without the protection of the law." [Henderson, J.]

Clancy v. Dickey, 2 Hawks 497, December 1823. Shutt's will, 1811: [499] "It is my will . . that my negroes should be kept together until my children arrive to full age or marry, and then to be divided between my . . wife and my children, share and share alike"

Brittain v. Smith, 2 Hawks 572, December 1823. "the Plaintiff being about to purchase a negro boy from the Defendant, wished him to war-

[1] "and sold them." Same *v.* same, 3 Hawks 294.

rant that a defective eye which the negro had, would not become perfectly sightless; . . Defendant replied, 'there is no doubt of the eye, in my opinion;' the Plaintiff then took the boy and gave $400 for him. The disease increased . . [573] until he became of small value, when the Defendant . . on his way to Charleston, stopped at the Plaintiff's house, . . Plaintiff asked . . if he intended to bring negroes back with him . . and understanding that he did, it was agreed, that if Defendant brought back a negro boy with him, he would let the Plaintiff have him, and take back the blind one, if the boys were of equal size; but should the boy brought from Charleston be the larger, then Plaintiff was to pay . . the difference in value, considering both boys sound. Defendant did bring back another boy and sold him to a third person;"

State v. Hale, 2 Hawks 582, December 1823. "an indictment charging the Defendant with having committed an assault on a slave, and with inhumanly beating, wounding, etc. The Jury . . found that the Defendant committed personal violence on the slave, . . by striking him,"

Held: this is an indictable offence. [585] "These offences are usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well disposed citizens, take refuge in the company of colored persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man. . . [586] Mitigated as slavery is by the humanity of our laws, the refinement of manners, and by public opinion, which revolts at every instance of cruelty towards them, it would be an anomaly in the system of police which affects them, if the offence stated in the verdict were not indictable. . . that many circumstances which would not constitute a legal provocation for a battery committed by one white man on another, would justify it, if committed on a slave, provided the battery were not excessive. . . the circumstances must be judged of . . with a due regard to the habits and feelings of society." [Taylor, C. J.]

Turner v. Whitted, 2 Hawks 613, December 1823. The will of John Whitted, who died in 1804, [614] "directed that a certain mulatto slave named Fanny, should be emancipated . . and that his executors should use all lawful means to have her set free, either by the General Assembly or other competent authority, and that his estate should defray the necessary expense, but that his 'executors should not . . ever suffer the said Fanny to be removed out of Orange county;' and . . 'if he should have no child, . . or . . [615] such child . . die before arriving at the age of twenty-one years, or without heirs . . that then . . his slaves Duncan, James, Stephen and Betty . . should be emancipated . . in the same manner . . as . . Fanny; . . that part of the money . . if no such child . . be equally divided between his brothers, . . Provided, that each of them . . pay unto my father . . £25, in trust, for the . . mulatto child, Fanny, to be paid to her when she shall arrive at full age;' . . [616] he had no child but Anne, [who] . . died . . without issue. . . [617] The bill . . stated that the Defendants, for the purpose of emancipating [Duncan, James, Stephen and Betty] . . threatened to remove

them to some State or country, beyond the jurisdiction of the Court, . . The Defendants admitted that the girl, Fanny, had been emancipated, as directed"

Held: [620] "the sum to be paid to Fanny was due at the age of twenty-one, . . [621] The direction in the tenth clause, as to the emancipation of the slaves [Duncan, James, Stephen and Betty], is void, according to the decision in Craven's case,[1] they consequently result to the next of kin of the testator." [Taylor, C. J.]

Jones v. Zollicoffer, 2 Hawks 623, December 1823. [643] "It is well known, as to slaves, we have our partialities and antipathies, regardless of their real value, . . and a person who had a right in common with another to a parcel of slaves, might be actuated by other motives than mere *caprice* or *fraud*, who refused to validate a sale made in severalty by his copartner of some favorite slaves." [Henderson, J.]

Wilson v. Twitty, 3 Hawks 44, June 1824. Held: [50] "The Sheriff was not to blame for not selling the personal property first; the negroes were kept back by the Defendant himself;"

Ayres v. Parks, 3 Hawks 59, June 1824. Bill of sale, 1818: "Received of . . Ayres, seventeen hundred and fifty dollars, . . for three negro girls, namely, Sukey, Peggy, and Jane. All . . are sound, healthy and clear of disease, and slaves for life, and warranted and defended from all manner of claims whatsoever." Peggy [60] "had long been subject [to an extraordinary bleeding at the nose] . . of which she died, within a year after Plaintiff bought her. . . the bill of sale was written by the Plaintiff, and when presented to the Defendant's intestate, she refused to sign it, unless the bleeding was excepted; the Plaintiff refused . . to purchase the negroes, unless Defendant's intestate should sign that deed; . . observing, that he was buying to sell again, and such an exception in his title would injure the sale; that he intended to carry the slave to the south, and that she would never be called on, on account of Peggy's defect: Defendant's intestate . . signed the bill of sale, and afterwards assigned as a reason . . that the price was a very large one . . and she did not expect from the distance to which the negroes were to be carried, that she would ever be called on to answer for Peggy's unsoundness. . . Verdict for Plaintiff, . . judgment" Affirmed.

Inge v. Bond, 3 Hawks 101, June 1824. "Bond and . . Slaughter well knowing . . Harry [the slave of Bond], to be afflicted with a disease of the liver, . . and deceitfully affirming . . Harry to be sound . . procured a sale of [him] . . for . . $400;" The bill of sale [102] "contained no warranty of soundness; . . Bond expressly refused to sign a bill of sale containing such warranty. . . The Jury found a verdict against Bond, and for Slaughter;"

Free Jack v. Woodruff, 3 Hawks 106, June 1824. "an action of trespass *vi et armis*, . . to recover his freedom: . . The Plaintiff was the child of a woman of colour, . . Jane Scott,[2] who, in . . 1774, was in

[1] P. 28, *supra*.
[2] See Scott *v.* Williams, p. 54, *infra*.

the possession of . . Allen: Allen stated that she was free, and . . she acted as a free-woman. In 1784, the Plaintiff was indented by Surry County Court, as a free boy, to . . Meredith, who frequently said he was free, but at length sold him to . . Woodruff; Woodruff afterwards sold him, and stated, that as he was reported to be a free boy, the purchaser must take him at his own risk. Allen . . [107] sold Jane Scott, to one Cresong, who sold her, together with twelve of her children, including the Plaintiff, to . . Lewis, . . 1788; and Lewis carried or sent such of the children as he had in his possession, (Jack not being one of them) out of the state; assigning as a reason . . his fear that if they remained he should lose them. . . On the trial below, the Defendant, to shew that Jane Scott was a slave, introduced a copy of a record from Salisbury Superior Court, . . that Jane Scott and her children had been . . set at liberty as free persons, on a writ of *habeas corpus*, returned to Surry County Court, and the judgment . . had been reversed by Salisbury Superior Court on the ground of want of jurisdiction in the County Court. Cresong . . was a party to this proceeding, and on the same day on which he sold to Lewis, executed a power of attorney to him, by virtue of which Lewis received the negroes from the Sheriff, on the process issuing upon the reversal of the judgment, and while the negroes were thus in his possession, he made the declarations" Verdict for plaintiff, new trial refused, and judgment. Affirmed.

Hart v. Newland, 3 Hawks 122, June 1824. "a deceit, in the sale of a negro. The defence . . was, that the real situation of the negro, who was consumptive, was as well known to the Plaintiff as to the Defendant, and even better. The negro, a short time before the Plaintiff purchased him, was a runaway, . . and he had been seen, two or three times, lurking about the plantations in the neighborhood of the Plaintiff, at whose house the negro's wife was; the Plaintiff knew he was a runaway, repeatedly expressed a wish to purchase him, and applied to an individual to go and purchase him, while he was a runaway. . . Defendant's counsel . . [123] asked [a] witness, whom he had seen bringing food to the negro, and stated that he expected to prove that the person was Plaintiff's wife." Evidence excluded. Verdict for the plaintiff. New trial refused.

State v. Isham (*a slave*), 3 Hawks 185, June 1824. "The Prisoner was indicted for grand larceny, found guilty and prayed the benefit of clergy; . . the State, by its Solicitor, objected on the ground that the Prisoner had, before, been allowed his clergy, on a conviction of grand larceny in Duplin county, and produced a paper purporting to be a transcript of the proceedings . . the seal attached . . was so indistinct . . that it could not, with certainty, be ascertained what seal it was. The Court below . . refused to consider the paper . . as a copy of the record . . and allowed the Prisoner his clergy," Judgment affirmed.

State v. Negro Adam, 3 Hawks 188, June 1824. "The bill charged the Defendant with wilfully . . killing two mares . . The indictment was quashed below [Superior Court] for want of jurisdiction,"

Judgment affirmed: "The crime may be said to have been created by the act of 1741, which annexes to the first offence the punishment of loss of ears, and discretionary whipping, and to the second offence, death. . . trial of this offence was transferred by the act of 1793, c. 381, to the County Courts, . . The . . act of 1816, gave to the Superior Courts jurisdiction of all offences, the punishment whereof may extend to life," [190] "although [the punishment] . . is death for committing a second offence of the same kind, in which case the Superior Courts would have jurisdiction, that consideration will not give them jurisdiction, in the first instance,"

Hilliard v. Dortch, 3 Hawks 246, December 1824 "an action . . brought to recover damages for killing a slave. The slave had been hired by the guardian of the plaintiff, for the year within which he was killed, to some other person. . . [247] the killing . . was occasioned by the exercise of immoderate force. The jury found a verdict for the plaintiff;" Judgment for the plaintiff.

Williams v. Averitt, 3 Hawks 308, December 1824. "action of trespass for beating a slave, the property of the plaintiff."

State v. Woodman, 3 Hawks 384, December 1824. "The jurors . . present, that a certain negro man slave named Tom, the property of . . Woodman, . . merchant, . . has been permitted by his master . . to go at large, hiring himself to divers persons, . . Tom having hired his own time from his . . master, . . contrary to the form of the statute"[1] "On the trial in the County Court, the jury returned a verdict of *guilty* and the defendant appealed from the judgment pronounced. In the Superior Court, the jury found a verdict of *guilty,* and the Court pronounced judgment that . . Tom should be hired out by the sheriff . . [385] at public vendue, for . . one year, . . the hire, payable to the wardens of the poor and for the use of the poor"

Affirmed: [387] "The design of the act is twofold; 1st, to fine the owner . . and 2dly, to abate the nuisance if it be continuing, or if it be at an end to pursue the slave . . in order to have him hired out. . . future owners . . take the property *cum onere*, which they must submit to like any other defect in the title." [Taylor, C. J.]

State v. Thompson, 3 Hawks 613, June 1825. "The defendant was indicted for permitting his negro slave to hire his own time, . . the Attorney General directed a *nolle prosequi*"

State v. Allen (*a negro slave*), 3 Hawks 614, June 1825. "the prisoner was indicted . . for a grand larceny in stealing a steer, and . . found guilty . . being brought to the bar for judgment, [he] prayed the benefit of his clergy. Upon which Mr. Solicitor Miller, by a counter plea . . [615] showed a conviction before had ['At a Superior Court'] of grand larceny [of twenty pieces of bacon] . . and demanded judgment of death against him. . . The record . . showed the prayer of clergy by

[1] Act of 1794, ch. 406.

the prisoner, its allowance by the Court, and a judgment of public whipping (instead of burning in the hand, according to the act of . . [616] 1816 for that purpose made.[)] . . The presiding Judge refused to pronounce any judgment against the prisoner, ordered . . the prisoner to be discharged;"

Affirmed: "the County Court alone could take original cognizance of the offence.[1] If the slave is charged with the second offence so as to incur the punishment of death . . it ought to be so stated in the indictment, that it might appear on . . the record that the court had jurisdiction." [Taylor, C. J.]

State v. Daniel, Crese, and Piety (*negro slaves*), 3 Hawks 617, June 1825. "At the spring term . . of . . Superior Court, . . the prisoners . . were indicted . . for a simple grand larceny . . in stealing a steer. . . it was . . admitted by the Solicitor that neither of the prisoners had before been admitted to the benefit of clergy, or been convicted of any felony. The presiding Judge . . ordered the indictment to be quashed."

Affirmed: "It is only upon a second conviction of the offence . . that the punishment of death is annexed to it; and it is consequently triable in the County Court, according to the act of 1793, ch. 381."

Spiers v. Clay, 4 Hawks 22, December 1825. "1822.—Received of . . Clay four hundred and fifty dollars, in full payment for two negroes,—and Dave her son,"

Pride v. Pulliam, 4 Hawks 49, December 1825. Will of Nathaniel Jones, admitted to probate in 1815: [50] "my will is, that all my negroes, male and female, who have arrived to the age of twenty-four years, and their increase as fast as they shall arrive to the said age of twenty-four years, be emancipated or liberated, whenever the law or laws of said state will admit or tolerate it. And I do most solemnly enjoin it as an injunction on my executors hereinafter named, and all my representatives, not to sell, give, swap, or convey any of the said negroes or their increase, in or out of the said state, as I may die seised or possessed of: and farther my will is, that until the said state shall pass a law or laws, for tolerating emancipation or liberation, that all my negroes that I may die seised or possessed of, may be divided among my wife and children, . . I suppose it will be asked my reasons for emancipating my negro slaves, when the laws of the state will admit or tolerate it; which reasons are as follows, to wit: Reason the first. Agreeably to the rights of man, every human being, be his or her colour what it may, is entitled to freedom, when he, she or they arrive to mature years. Reason the second. My conscience, the great criterion, condemns me for keeping them in slavery. Reason the third. The golden rule directs us to do unto every human creature, as we would wish to be done unto; and sure I am, that there is not one of us would agree to be kept in slavery during a long life. Reason the fourth and last. I wish to die with a clear conscience, that I may not be ashamed to appear before my master in a future World. These are the reasons for emancipating my slaves; and I wish every human creature

[1] See State *v.* Adam, p. 47, *supra.*

seriously to deliberate on my reasons. And so farewell to this terrestrial world." In 1823 the executor, in a petition to the Superior Court, stated, "that among the slaves of the testator at the time he died, was a black man named Allen, now of the age of twenty-eight years, whose conduct from his childhood had always been sober, honest, industrious and exemplary, in every respect as a faithful and trusty slave, and that his services had been meritorious and useful, and that accordingly he stood high in the favour and confidence of his late master; that by the intermarriage of the defendant with Amelia, one of the coheirs and legatees of the testator, the defendant became possessed of the said slave Allen, and detained him in slavery, claiming to be his owner and master; and that the defendant had sold or was about to sell said Allen to a dealer in slaves. That the petitioner was ready to furnish satisfactory evidence of the good moral character and meritorious services of Allen; and that Allen was prepared to give such security as is required in cases of emancipation by our law: and the executor, therefore prayed of the Court, that Allen might be emancipated and set free from bondage, pursuant to the will of his late master. On hearing the petition, his honor, Judge Donnell was of opinion, that a license could not be granted to emancipate upon the facts disclosed by the petition itself, and therefore ordered it to be dismissed; whereupon the petitioner appealed." Judgment affirmed: when the slaves [60] "were delivered over to his representatives by the assent of his executors, the trust would seem to cease in the latter, and attach to the former. If that is the case, the executors filed this petition without any authority from the will." [Hall, J.]

Allison v. Allison, 4 Hawks 141, December 1825. John Allison's will, executed in 1821: [145] "I bequeath to my nephew . . all the personal property . . excepting also my negro woman slave named Ann, which for divers causes and considerations me hereunto moving and meritorious services rendered to me by her in time of sickness, I do hereby . . bequeath . . to . . Bruce, with this condition, that she be not sold or given away to any other person except it be with her consent; but that . . Bruce support her with food and clothing suitable to her station; and I . . bequeath to . . Bruce . . one hundred dollars, which sum I hereby direct my said trustees to pay to him for the support of my said negro woman Ann when she may, through old age or infirmities, become unable to perform the duties of a slave and servant;"

State v. Yeates, 4 Hawks 187, December 1825. "Indictment for the murder of a slave, . . The jury found the prisoner guilty of manslaughter, and the Court sentenced him to be imprisoned eleven calendar months, and to receive at two several times thirty nine lashes. The prisoner, by his counsel, objected to that part of the sentence which imposed whipping; . . overruled,"

Judgment reversed [192] "so far as it sentences the defendant to be whipped, . . and affirmed as to the residue." [190] "in legislating on this subject,[1] the first object was to get rid of the disgracing practice of

[1] Act of 1816, ch. 20.

burning in the hand; . . the words, 'moderate pecuniary fine,' used in the act, were intended to apply to manslaughter;" [Taylor, C. J.]

Croom v. Herring, 4 Hawks 393, June 1826, Whitfield's will: [394] "I leave all my estate . . except negroes and bank stock, to be sold . . my negroes and bank stock, not disposed of by this will, I leave to be divided among all my heirs,"

Falls v. Torrence, 4 Hawks 412, June 1826. [414] "Binah was purchased at the sale in [November] 1781 . . at the price of £70 hard money, which was a fair price," "March, 1784, another sale was made . . on account of the depreciation of the [continental] currency . . in . . 1781, 1782 and 1783; . . [415] Binah was sold at the second sale"

Selby v. Dixon, 4 Hawks 424, June 1826. In 1822 a negro man was sold, at public sale, for $396.

Nelson v. Evans, 1 Devereux 9, December 1826. "an action . . for verbal Slander. The words charged . . to have been spoken were, that the Plaintiff had broken the Defendant's house and stolen his gun, or that he (the Plaintiff) had caused his negro slave to do it. . . [10] The Defendant . . offered to give in evidence, a record of the conviction of the negro slave, for breaking the house and stealing the gun, but the Judge rejected it."

Held: [12] "the record ought not to have been received." "the conviction of the slave might have arisen from evidence wholly incompetent against the master, a free white man. . . Should it be asked, if this record is inadmissible . . what is to be done with accessorial offences of white persons in such cases? It is answered, that if the record of the conviction is a *sine qua non* to the conviction of the principal, the record must be received." [Henderson, J.]

State v. Jim (*a negro slave*), 1 Devereux 142, December 1826. "The Defendant was indicted under the act of 1823 [1] for making an assault . . 'upon the body of one M. J. a white female, with intent . . to ravish,' . . the Counsel for the Defendant challenged for cause those Jurors who were not owners of slaves, . . overruled . . After a verdict for the State, the Defendant's Counsel moved in arrest of judgment, because it was not charged . . that the offence was committed 'violently, . . and against the will of . . M. J.' His honor . . for this cause, arrested the judgment, whereupon the Solicitor prayed an appeal . . The Attorney-General declined to argue the case for the State."

Judgment arrested: [143] "The charge . . was no more than a misdemeanor at common law, . . as it still continues in relation to all but the colored population. . . [144] The late act of Assembly having elevated the offence to a capital felony, affords an additional reason for . . adhering to the established forms, . . For this omission . . I think this indictment is defective. It appears to me,[2] that the act of 1793, c. 381, extending the trial by Jury to slaves, and directing the Jury to be

[1] Tay. Rev., ch. 1229.

[2] "not the decision of the Court." State *v.* Arthur, 2 Devereux 220.

composed of owners of slaves, is not repealed by any subsequent law. . . [145] That the master would have assurance of an equitable trial by persons, who had property constantly exposed to similar accusations, and who would not wantonly sacrifice the life of a slave, but yield it only to a sense of justice, daily experience is sufficient to convince us." [Taylor, C. J.] See same *v.* same, p. 54, *infra.*

Wilkes v. Clark, 1 Devereux 178, June 1827. "The Defendant had a boat commanded by one of his slaves, plying for freight on the river Roanoke, and a quantity of corn was . . delivered to the slave . . to be carried to Plymouth"

Trustees of the Quaker Society of Contentnea v. Dickenson, 1 Devereux 189, June 1827. "The action was detinue, brought in the name of Joseph Borden and fourteen other persons, . . 'Trustees of the Religious Society . . called . . Quakers,' . . to recover a negro slave . . 1817, . . William Dickenson the elder, executed a deed, by which he conveyed the negro slave . . and others, 'to Thomas Cox, Joseph Borden and Francis Mace, Trustees of the Religious Society . . Quakers,' . . to have and to hold . . 'for the use . . of . . the said Religious Society . . forever.' . . [190] the persons named . . as Trustees, were duly appointed such, according to the act . . of 1796, and that the Plaintiffs are their successors . . proved . . that the religious principles of the . . Quakers, forbid them to hold to the use of themselves individually, or to the use of the society any persons as slaves beneficially as property, or for purposes of profit—that it was the intent of . . [the] parties to the deed, as well as of the Society, . . that the Trustees as a sort of guardians of the slaves, should hold them . . for the benefit of the slaves themselves, they working under the direction of the Trustees, and entitled to receive the profits of their labor, after defraying the expenses attending their comfortable maintenance—and to be ultimately emancipated . . whenever it could be effected according to the laws of this state." Nonsuit.

Judgment affirmed: [202] "Our law allows the Trustees to hold them for the benefit of the Society, whereas in truth, they hold them for the benefit of the slaves themselves, . . [203] a contrary decision would produce most, if not all, of the ill effects which the Legislature sought to avoid by the act of 1777. If that law could be eluded by transferring slaves to this Society, . . Numerous collections of slaves, . . working for their own benefit, in the view . . of others who are compelled to labour for their owners, would naturally excite in the latter, discontent . . and lead possibly . . to the most calamitous of all contests, a *bellum servile.*" [Taylor, C. J.] Hall, J., *dissentiente*: [207] "It is not for this Court . . to apply a preventive remedy. . . if on account of our unfortunate connection with slavery, these sentiments [of humanity, mingled with the religion of the Quakers,] tend to a mistaken policy, if self preservation impels us to a different . . course, that *course* should be pointed out by the Legislature;"

Watts v. Greenlee, 1 Devereux 210, June 1827. "Case for slanderous words. . . [211] on several occasions, the Defendant asked of an old

man named Martin, who lived with him, what was the story about Watts' daughters and [defendant's] negro Ben, and Martin . . stated that all Watts' daughters were big with child by negro Ben."

Weaver v. Cryer, 1 Devereux 337, December 1827. The plaintiff "proved, that it was generally reputed, that the woman who lived with him, was his wife. It appeared that he was a mulatto, and that the woman was white."

Pierce v. Myrick, 1 Devereux 345, December 1827. "Trespass for killing the negro of the Plaintiff. . . the Plaintiff offered evidence of the peaceable and submissive character of the slave, . . rejected . . His Honor instructed the Jury, that if the circumstances . . rendered it probable . . that the Defendant killed the negro, they should find for the Plaintiff, unless they collected . . a reasonable inference that the slave was killed by the Defendant, to defend his person or property from some threatened felony. . . 'not guilty'" New trial denied.

Judgment affirmed: [346] "evidence of . . orderly deportment . . should have been received, . . But . . not . . a new trial on that ground, because the Jury having found the Defendant *not guilty*, the justification could not have been passed on by them."

Hamrick v. Hogg, 1 Devereux 350, December 1827. [351] "that in the first part of that year, her health was very bad, and that she was unable to work—but that in the latter part . . she was better, and rendered him some services"

Estes v. Hairston, 1 Devereux 354, December 1827. "the petitioner . . was on his way, with a considerable number of slaves, from Virginia to Tennessee; and while passing through the county of Stokes, his negroes were attached, and before he could . . replevy them, the expences of their maintenance, while in the custody of the Sheriff, amounted to $1400."

State v. Johnson, 1 Devereux 360, December 1827. Johnson was indicted for concealing a mulatto slave on board a vessel, without the consent of his owner, for the purpose of carrying him out of the state. He was convicted, and judgment arrested.

Affirmed: [363] "the Legislature[1] meant only to include persons attached to the vessel, . . the indictment ought to have described the prisoner as . . attached to the vessel,"

State v. Wier, 1 Devereux 363, December 1827. An accomplice [364] "swore, that while one Kenedy and himself were at the house of the prisoner, making preparations to carry off several stolen negroes, the prisoner gave them the form of a bill of sale for a slave, and directed them to draw by that form, four others—that Kenedy accordingly drew four bills of sale to him, the witness, each for a slave, signed them as an attesting witness, and put two other names to them, as witnesses also,—. . that the prisoner . . in about three hours returned them, with the name of . . Moore, signed as the vendor. . . [365] a verdict for the State . . judgment of death;" Affirmed.

[1] Act of 1825.

White v. Beattie, 1 Dev. Eq. 87, December 1827. Will of Ann J. White: "To David J. White, a likely negro boy, between eight and ten years old. To Ann J. Colvin, a likely negro girl, between four and five years old. . . [88] I would rather you would buy negroes for David J. White and Ann J. Colvin, than to separate families.[1] I wish all this done at once, so as to save their being scattered."

Dawson v. Dawson, 1 Dev. Eq. 93, December 1827. "the commissioners were . . requested either to make a division [of the slaves between the two tenants in common] by chance, after dividing the negroes into two lots, . . [94] or by allotting them indiscriminately, first to one of the legatees, then to the other; or to divide them in any fair and equitable manner."

Samuel Scott v. Williams, 1 Devereux 376, June 1828. "The Plaintiff declared in trespass for an assault and battery and false imprisonment, the object . . being to ascertain whether the Plaintiff, a negro held in slavery by the Defendant, was not in truth free. . . he was the son of Jemima, . . the daughter of Jane Scott,[2] and the question was whether Jane Scott was a free woman?—Contradictory statements of her color were given, but the Plaintiff introduced an indenture whereby Jemima was bound to the father of the Defendant, as a free girl of colour. The Plaintiff was given as a slave, by the Defendant's father to him, . . and served the Defendant from the time of the gift, to that of the trial. His honor Judge Daniel, instructed the Jury, . . If she [Jane Scott] was of a black African complexion, they might presume . . that she was a slave; if she was of a yellow complexion, no presumption of slavery arose from her color. . . if their verdict should be for the Plaintiff, they might, if they pleased, give him more than nominal damages. A verdict with substantial damages, was returned for the Plaintiff," and a new trial denied. Judgment affirmed.

State v. Hood, 1 Devereux 506, June 1828. "The Defendant, a free negro, was convicted of an assault and battery, . . Being unable to pay the costs . . the Defendant prayed that he might be discharged, upon taking the oath prescribed for insolvent debtors. The Solicitor General moved his Honor to direct the Sheriff to hire out the Defendant to any person, who would take him for the shortest term, and pay the costs of the prosecution. An order for that purpose" was made. Judgment reversed.

State v. Jim (*a negro slave*), 1 Devereux 508, June 1828. "The prisoner was indicted under the act of 1823[3] for an assault with an intent to commit a rape upon a white female. . . the only witness who directly proved the assault, was one . . whose general moral character was seriously impeached; . . [509] a gentleman of the bar . . proving

[1] It would be hard to buy a negro five years old without separating some family. The testatrix evidently objects to separating families of her own slaves only. Ed.

[2] See Free Jack *v.* Woodruff, p. 46, *supra.*

[3] Tay. Rev., ch. 1229.

a material variance between her evidence on the trial of this indictment, and that given upon a former trial [1] of the prisoner for the same offence. His honor . . instructed the Jury, that . . 'they might . . reject part of a witness's testimony which they did not believe, and act on such part as they did believe.' The prisoner being convicted, . . judgment of death awarded," Judgment reversed and new trial granted: [510] "*falsum in uno, falsum in omnibus.*"

State v. Barden, 1 Devereux 518, June 1828. "a witness stated, without any objection on the part of the Defendant, that he was informed by a negro, that the [stolen] cotton was in a house, on the premises of the Defendant—that he searched that house, and found the information of the negro to be correct."

Yarborough v. State Bank, 2 Devereux 23, December 1828. [24] "the Sheriff made the following return. . . 'they [Fox and Jones] gave me an indemnity . . and accordingly . . 1828, I seized the following negroes, having in company with Fox and Jones, spent several days in pursuit of them.'"

State v. Isaac (a slave), 2 Devereux 47, December 1828. "An indictment for murder had been found against the prisoner, . . a *nolle prosequi* was entered, and upon the motion of the owner, who had been duly notified . . the prisoner was discharged." Held: the owner is liable for the jail fees, as well as for the court costs.[2]

State v. Jones, 2 Devereux 48, December 1828. "Negro Charles, the property of the Defendant, had been convicted of a rape, and executed. A question was made . . whether . . the owner . . was liable to his prison charges, and to the fee of ten dollars allowed for carrying the sentence of death into execution. Both questions were decided for the State," Affirmed.[3]

State v. Chittem, 2 Devereux 49, December 1828. "The prisoner was indicted as an accessory before the fact, to the murder of . . Lindsey. The indictment charged March, a negro slave, to be the principal felon. On the trial . . the prosecuting officer offered in evidence the record of the conviction of March," on the indictment against whom, "negro Lamb" was indorsed as a witness. Counsel for the prisoner, Chittem, objected; overruled. [50] "The jury found the prisoner guilty, . . motion for a new trial . . overruled, and judgment of death awarded," Affirmed.

State v. Roane, 2 Devereux 58, December 1828. "The Defendant was indicted for the murder of Levin, the slave of . . McIntire. . . a waiter in the tavern of his master, at 12 o'clock of the night of his death, [he] went to the lot of the Defendant . . Defendant was awakened by the sharp barking of his dog . . seized a gun, . . saw the deceased going from the kitchen towards the gate, . . asked who was there, and no answer being returned, he fired and killed the deceased . . he did not intend to strike the negro, but to . . frighten him. . . [59] no animosity

[1] P. 51, *supra*.
[2] Acts of 1793 (Rev., ch. 381, sect. 2) and 1795 (*ibid.*, ch. 438, sect. 7).
[3] Acts of 1793, 1795, and 1797. Rev., ch. 484.

. . was proved to exist . . several out-buildings in the neighborhood had been broken open and robbed . . and that a good deal of alarm existed in the neighborhood, caused by depredations committed by runaway slaves. . . [60] The jury found the Defendant guilty of manslaughter, and sentence being pronounced, he appealed" Judgment affirmed.

Barnes v. Dickenson, 1 Dev. Eq. 373, December 1828. "Plaintiff in . . 1810, bought . . a negro woman, . . in . . 1821, the Defendant privately procured the slave and her children, to leave . . and took them into his possession."

Leake v. Gilchrist, 2 Devereux 73, June 1829. [75] "where so much of men's substance, as in North-Carolina, consists of slaves bought abroad." [1] [Ruffin, counsel for the Appellant.]

McRae v. Oneal, 2 Devereux 166, June 1829. "Case for maliciously prosecuting the Plaintiff for stealing a negro, . . The Plaintiff was a resident of Anson, and took a female slave belonging to him, and started on foot to . . Missouri, for the purpose, as he said, of selling the slave, and securing the titles to some land . . [They] stopped at the shop of the Defendant, six miles west of Morganton. . . the former applied to the latter to purchase the slave, offered her at a very low price, . . [167] the Defendant . . having his suspicions awakened, went during the night to the house where the negro slept, and examined her as to the truth . . The negro informed the Defendant that she did not belong to the Plaintiff, but had been taken by him . . by stealth." The defendant "caused the arrest . . to be made in the morning." A witness "proved that the Plaintiff and the negro passed his house two miles east of Morganton, . . on foot, the former appeared to be drunk, and was behaving in an unbecoming manner towards the latter.—The other witness swore that he was in Morganton when the Plaintiff arrived there—that both . . had no clothes except those they had on—that the manner and appearance of the Plaintiff excited suspicion, and a man had talked of having him arrested on a charge of stealing the negro" Verdict for defendant; new trial refused. Affirmed.

State v. Arthur (*a slave*), 2 Devereux 217, June 1829. "The prisoner was indicted for murder, . . it was alleged on the part of the State, and assented to by the Counsel for the Prisoner, that the jury ought to be entirely composed of slave owners. The question being considered doubtful by his Honor, he consented . . in this case, . . Two jurors were challenged by the prisoner for cause, . . not slave owners; . . allowed. Afterwards a challenge for the same cause was made by the State, and objected to by the Counsel for the prisoner, but was allowed . . the body of the Deceased was found . . 27th of November, 1828, on the side of the road. There were appearances of a fierce conflict between two men for the distance of thirty-five yards, within which space, and within twelve yards of the body, the following paper was found: 'Permit Arthur to pass and repass till Monday morning next. November 23,

[1] *I. e.*, in South Carolina and other states.

1828. Henry Sheppard.' Sheppard . . wrote this permit by the direction of the prisoner's master, and that he delivered it to a little boy, the son of the prisoner, to carry it to his father. . . The Prisoner was convicted . . and appealed" Judgment affirmed.

Peace v. Nailing, 1 Dev. Eq. 289, June 1829. "1785 . . two negroes were . . purchased . . for £132 10 *s.*"

Henderson v. Wilson, 1 Dev. Eq. 309, June 1829. Henderson's will, executed 1818: "the tract of land that I now live on . . to be . . sold . . and the profits arising to go towards paying a minister of the gospel, . . [310] The rest of my negroes, . . five in number, . . sell at public sale,"

State v. Mann, 2 Devereux 263, December 1829. "The Defendant was indicted for an assault and battery upon Lydia, the slave of one Elizabeth Jones. . . Defendant had hired the slave for a year—that during the term, the slave had committed some small offence, for which the Defendant undertook to chastise her—that while in the act of so doing, the slave ran off, whereupon the Defendant called upon her to stop, which being refused, he shot at and wounded her." Verdict for the state.

[268] "Let the judgment below be reversed, and judgment entered for the Defendant." [264] "A Judge cannot but lament, when such cases . . are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own, exist and are thoroughly understood. . . [265] in reference to all other persons but the general owner, the hirer and possessor of a slave . . is, for the time being, the owner. . . upon the general question, whether the owner is answerable *criminaliter*, for a battery upon his own slave, or other exercise of . . force, not forbidden by statute, the Court entertains but little doubt. . . There have been no prosecutions of the sort. . . [266] The power of the master must be absolute, to render the submission of the slave perfect. I most freely confess my sense of the harshness of this proposition, . . And as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things, it must be so. . . This discipline . . constitutes the curse of slavery to both the bond and free portions of our population. . . [267] The protection already afforded by several statutes, . . the private interest of the owner, the benevolences towards each other, seated in the hearts of those who have been born and bred together, the . . deep execrations of the community upon the barbarian, who is guilty of excessive . . cruelty to his unprotected slave, . . [268] have produced a mildness of treatment, . . ameliorating the condition of the slaves. The same causes . . will continue to operate with increased action, until the disparity in numbers between the whites and blacks, shall have rendered the latter in no degree dangerous to the former, when the police [*sic*] now existing may be further relaxed." [Ruffin, J.]

State v. Pemberton and Smith, 2 Devereux 281, December 1829. The defendants were indicted for playing "at cards with certain slaves,"

Verdict for the state. Judgment arrested: it is not an offence either at common law or by statute. Affirmed.

Choat v. Wright, 2 Devereux 289, June 1830. The slave was "set up at public auction, and stricken off . . at 600 dollars;"

Hoyle v. Stowe, 2 Devereux 318, June 1830. Huson's will directed [319] "certain negroes to be hired out, for the purpose of defraying the expense of the education of his children, until their ages of twenty-one for males, and eighteen for females,"

Peterson v. Williamson, 2 Devereux 326, June 1830. In 1801 "Peterson, the father of the Plaintiff, made a parol gift of the slave Hannah to her—the slave being then only a few days old, and the Plaintiff a child aged fifteen years" After 1820 Peterson became insolvent. In 1828 the defendant, sheriff, sold Hannah and her mother, under executions against Peterson's estate. Judgment for the defendant affirmed: the gift was void as to the creditors of the father, though his debts were contracted twenty years after.

State v. Kimbrough, 2 Devereux 431, June 1830. [434] "One of the witnesses . . stated that he met a negro after night, and about the time the homicide was supposed to be committed. The Counsel for the prisoner proposed to examine him, as to the declarations of the negro made at that time. . . objected . . sustained . . because the declarations were apparently no part of the *res gestae*."

State v. Moses (*a slave*), 2 Devereux 452, June 1830. Moses was indicted, being charged with killing Gabriel, a slave. [454] "the principal witness for the prosecution deposed, that on a dark night, he was standing within ten steps of the prisoner, when he saw him pull the trigger and fire the gun which killed the deceased. . . after the deceased was shot, the prisoner and himself, both being fugitive slaves, went into the woods, where the prisoner left him . . and went towards the house of Juba, a slave . . and after being absent some time, returned and said, that Juba had charged him with being the murderer . . Juba . . positively denied having ever seen the prisoner during the whole time he was a fugitive, . . Witnesses . . gave Juba a good character, and proved especially that he stood high in the confidence of his master. . . A witness . . in support of the principal witness . . was impeached by another witness . . who swore, that . . he heard the first say that he had a grudge against the prisoner, and would hang him if he could, . . [455] his Honor instructed the jury, . . it was for them to say, whether any and what influence the witness Juba's having a good character, and standing high in the estimation of his master, might have in making him desirous to conceal any intercourse he might have had with a runaway slave." Verdict of guilty. Judgment of death affirmed.

Poindexter v. McCannon, 1 Dev. Eq. 373, June 1830. In 1811 "a likely boy about sixteen years old, and worth $500" was sold for $400.

Cannon v. Jenkins, 1 Dev. Eq. 422, June 1830. [423] "four young negroes, viz: Jacob, Phil, Tom and Sam, who were directed by the will

to be sold . . were sold in one lot, and were bid off by the administrator . . at . . $1,025 . . they were four *brothers*, whereof the eldest was not more than eight, and the two youngest twins, about four years of age. . . [424] on the same evening, [the purchaser] . . sold the negroes at the same price to Rountree, who . . held the exclusive possession . . up to his death, nearly thirteen years afterwards." [425] "a lady . . urged Rountree to purchase, as he already owned the mother of the boys. . . [426] all the witnesses prove, that the sum of $1,025 was the full value of the negroes, as they were purchased by Rountree, namely, *in one lot*. . . The Court does not favor sales by executors in large masses. . . Sometimes, indeed, as much, or more can be had, when the property is disposed of in one, than in more parcels, as in the instance of a *family* of slaves, when the children are *all* of tender years. But he, who conducts such a sale, does it at his peril, and must answer for the true value, . . It would certainly have been harsh to separate these four boys, and sever ties which bind even slaves together. True, it must be done, if the executor discovers that the interest of the estate requires it; for he is not to indulge his charities at the expense of others. . . [427] all the witnesses think it [the price] a fair one, and some of them that it is higher than the real value, and that nobody but Rountree, who owned the rest of the family, would have given as much, if the negroes had been severally sold. Indeed, it speaks for itself, being $256 25 each, for little children." [Ruffin, J.]

Jones v. Mills, 2 Devereux 540, December 1830. "Case, for seducing from the service of the Plaintiff two coloured boys, who were bound to him by the County Court . . The Plaintiff having made out his case by proof of the indentures,[1] and of the actual service of the apprentices, the Defendant produced a blank paper, signed by the Plaintiff and two sureties, intended for the bond required by the act of 1801," [2]

Held: [541] "the Defendant was not at liberty . . to avail himself of any defect in the bond required"

State v. Charity (*a slave*), 2 Devereux 543, December 1830. "The prisoner was indicted for the murder of her own child, . . On the trial, the master was offered by the prosecution, to prove the confessions of the prisoner. This was objected to by the master and by the prisoner; but the objection was overruled, and the witness examined. The prisoner was convicted, and appealed"

Judgment reversed, and new trial granted: "I do not know that the question . . has ever arisen before in this State. . . [544] The whole property in the slave is in jeopardy, and the master is liable for the costs in case of a conviction. . . [545] I think, therefore, that a master cannot be a witness for his slave. It follows, that he ought not to be forced on the other side. . . The privilege not to testify, upon the ground of interest, is that of the master and not of the slave. It may be . . waived by the former." [Ruffin, J.] Evidence of the master [548] "ought to be excluded in all cases of confessions." [Henderson, C. J.]

[1] Act of 1762. Rev., ch. 69.
[2] *Ibid.*, ch. 583.

State v. Sam (*a slave*), 2 Devereux 567, December 1830. "The prisoner was indicted, under the act of 1823,[1] . . 'The jurors, . . present, that Sam, a person of colour, . . upon the body of one L. S. a white female, . . violently . . did make an assault, with intent to commit a rape . . did beat, etc. against the form of the statute.' After conviction," a new trial, on the ground of surprise, was refused. "A motion in arrest of judgment was then made, because the indictment did not charge the offence to have been committed since the passage of the act of 1823. . . overruled, and judgment of death . . pronounced," Affirmed.

State v. Tom (*a slave*), 2 Devereux 569, December 1830. "The prisoner was indicted under the act of 1802[2] . . 'that Donum, a slave, the property of E. S. B., Tom, a slave, the property of S. F. (and six others) . . did arm themselves with guns . . and conspire to rebel . . And . . further . . that . . Tom, . . Donum, . . (and six others) . . did . . conspire the murder of one William Duncan,' . . [570] Donum was first tried and acquitted. On the trial of the prisoner, no evidence was offered on the first count. The enquiry was confined solely to a plot . . to murder Duncan, without any ulterior views to an insurrection. . . convicted, and judgment of death was pronounced;"

Judgment reversed and new trial granted, because of misdirection by the judge below. [579] "submit the case to a second jury, to consider the prisoner's guilt, as connected with that of the other Defendants, exclusive of Donum." Henderson, C. J.: [582] "by the very words of the act, one person only cannot be guilty of the crime created by it. It is contended, that no murder comes within the act, but one connected with . . the rebellious intent . . I think that this construction can be supported, neither by the words of the clause, nor the context of the act."

Huson v. McKenzie, 1 Dev. Eq. 463, December 1830. "As to my negro woman Tempe, and my two negro boys, Stephen and Leo, my will is, that these negroes be hired out annually, and the monies . . be appropriated to schooling my children, or as much . . as may be necessary . . and the balance . . (if there be any) shall be reserved to meet accidental occurrences (the death of slaves specifically bequeathed)"

Stevens v. Ely, 1 Dev. Eq. 493, December 1830. "The Plaintiff alleged, that his testatrix [Letitia Gardner], intending to emancipate her slaves, consisting of a woman and her children, conveyed them to the Defendant, in consideration of £5, 'in trust, that . . Ely, his heirs, etc. shall, from time to time, permit the said negroes and their increase, to live together, upon his . . land, and to be industriously employed, and continue to exercise a controlling power over their moral condition, and to furnish said negroes with the necessaries and comforts of life.' That by an endorsement . . [494] it was agreed, that Plaintiff's testatrix should have the use of the said slaves from year to year, during her life,

[1] Tay. Rev., ch. 1229.
[2] Rev. of 1821, ch. 618.

. . to pay the Defendant one shilling for each year—that his testatrix, by her will, bequeathed the negroes to her sister, . . the Register . . swore, that when the Defendant came to have the deed registered, he observed, that the old lady had conveyed the negroes to him, for the purpose of having them emancipated. . . His Honor . . 1829, declared that the Defendant held the slaves as a bare trustee—that the trust was one contrary to the policy of the law, and resulted for the benefit of the Plaintiff, and decreed a reconveyance by the Defendant, upon having the consideration money refunded to him, and directed an account of the rents and profits."

Affirmed; but Chief Justice Henderson observes that [496] "sensitive as we are, or ought to be, as to whatever may interfere with our laws on the question of slaves, and however severely we may . . punish those, who in the most remote manner attempt to weaken the bonds, by which we hold them, yet these sensibilities are not roused . . against a single female, who from feelings of kindness towards her three or four slaves, or from feelings of conscience, endeavors to better their condition, who has acted openly," Hall, J.: [498] "In that trust, I see nothing illegal or immoral."

Yarborough v. Harris, 3 Devereux 40, June 1831. [41] "a gift, by the intestate, of the slaves in dispute, to his lunatic" son.

Arnold v. Blackwell, 2 Dev. Eq. 1, June 1831. "a valuable negro man" was valued at $500 in 1821; and a female slave, at $300.

Allison v. Davidson, 2 Dev. Eq. 79, June 1831. "previous to . . 1817, a copartnership had subsisted between the other [two] defendants and himself [Simonton], in the purchase and sale of slaves—that in . . 1816, they sold a large number on credit in . . Mississippi, and upon the debts becoming due, it was determined that the person who went to collect them, should carry out a number of slaves with him—that Worke had left Iredell for the purpose of making purchases of slaves, and himself and Davidson were to have followed him, when he met the plaintiff's father, who proposed that the plaintiff should be taken into their copartnership, observing that as the plaintiff was a very young man, and entirely inexperienced, he did not expect him to be admitted upon terms of perfect equality, and that he, the father, was principally anxious to get the plaintiff into business, and enable him to acquire some knowledge of it from experience. . . [80] in the speculation then on foot. . . [81] the net profits . . amounted to $9,507 10, of which each partner was entitled to $2,376 25—that a capital of $4180 was advanced by the plaintiff, and $4 420 91 by each of the [three] defendants—that Simonton received for cash sales at Natchez, $20,275—that at the same time sales to the amount of $6,125 were made upon a credit," Simonton was [85] "trusted by all parties; and more particularly by the plaintiff, who alone went with him in person on the trip. . . [86] He [the plaintiff] had no confidence in the others"

Redmond v. Coffin, 2 Dev. Eq. 437, June 1831. Will of Thomas Wright, who died in April 1816: "I . . bequeath them (the slaves)

unto the Society of Friends of New [Garden] Monthly Meeting, . . [438] I also . . bequeath all the personal property of my estate to the above named black people, to be sold and equally divided amongst them." The executors, "believing the bequest to be valid, . . had in August 1816, delivered the slaves, and paid over the residue to the agents of that Meeting. . . in December, 1817, [Willie] Wright presented to them a duly authenticated power from the plaintiff [next of kin to the testator], authorising him . . to settle . . with them for the plaintiffs' [*sic*] share" They made a compromise with Wright [452] "after the plaintiff had revoked his authority, and the other parties had knowledge of the fact. . . [454] upon inadequate consideration, and by taking advantage of . . the distresses of the agent." [449] "that in 1819, one of the slaves was sent out of the State to parts unknown, or . . permitted . . to go, . . and that pending this suit . . three others of them were . . [450] sent or permitted to go away." [439] "The answer of the agents of the New Garden Meeting set forth . . the religious belief of the Society, and insisted that as a Society, they could take and hold slaves. They admitted, however, that slaves held by the Society were not worked for its profit—but that the money realised from their labor was deemed by the Society a fund to be held in trust for the slaves, and to be used for their spiritual and temporal advancement."

Held: [440] "Qualified emancipation . . stands upon the same ground as a bequest directly for that purpose.—However praiseworthy the motive for accepting such a trust, or however benevolent the will of the donor may be, it cannot be supported in a court of justice. A stern necessity arising out of the safety of the commonwealth forbids it." [Ruffin, J.] [448] "The master [in equity] . . charged the defendants [the executors and the agents of the society] jointly, with the nett residue of the estate . . $416 93, and interest thereon; with the value of four slaves, which had been carried to distant States, and interest thereon—together with the annual value of all the other slaves and interest thereon—amounting in the whole to 3,621 74 dollars." See same *v.* same, p. 69, *infra.*

Atkinson v. Clarke, 3 Devereux 171, December 1831. [172] "A deed . . to . . Pettaway, . . 1826, conveying . . 'all . . Tunstal's negro slaves, say one hundred and three in number, the names of said slaves being too lengthy to insert in this indenture, said Tunstal will give the name of each slave to said Pettaway, when called for.'"

Wilson v. Wilson, 2 Dev. Eq. 181, December 1831. David Wilson's will, 1820: "I will that the . . third part of the valuation of my negroes be placed in the hands of my executors, for the support of my son Hugh . . It is also my request that my son Moses take the negroes that may be valued for the support of Hugh . . and pay the valuation into the hands of my executors" [184] "there were only five altogether, and that four of them were of little service." [182] "two female slaves, the eldest of which was not five years old, were allotted to the plaintiff [Hugh] at $420, one third of the whole value being $373 33." These

slaves [185] "would have been expensive for several years, instead of yielding any thing towards the plaintiff's maintenance."

State v. Martin, 3 Devereux 329, June 1832. "The prisoner was tried . . upon the following indictment: 'The jurors . . present, that Martin, a slave, . . with force . . upon one S. H. a white female, . . feloniously did make an assault, and . . did feloniously attempt to ravish' . . After a verdict for the prosecution, his Honor arrested the judgment, . . appealed. . . No counsel appeared for the prisoner."

Judgment affirmed: "The statute [1] makes it a capital felony, for any person of color to *make an assault with intent to commit a rape* upon the body of a white female. . . [330] Here the word *attempt* has been used in its stead." [Ruffin, J.]

State v. McDonald, 3 Devereux 468, December 1832. A constable, in executing a search warrant for certain slaves, "accompanied by the other defendants, . . proceeded to the farm of . . P. B. . . and . . took into their possession some of the negroes . . who were laboring upon the farm . . afterwards proceeded to the dwelling-house . . and after . . admittance . . had been refused, with force . . broke open the door . . and took . . others of the negroes"

State v. Clemons, 3 Devereux 472, December 1832. Held: the act of 1794,[2] to prevent owners of slaves from hiring to them their time, does not subject the master to an indictment, the remedy being against the slave alone.

Scroggins v. Scroggins, 3 Devereux 535, December 1832. "a petition for a divorce. . . the marriage took place on the 18th of December, 1828; that the parties 'lived together in uninterrupted harmony for near five months, when the infidelity and fraud of the defendant was manifested by an occurrence which admitted of neither explanation or palliation, and dissipated all hopes of happiness, . . that on the 1st of May, 1829, the defendant became the mother of a mulatto child.'" Petition dismissed.

Judgment affirmed: [545] "persons who marry, agree to take each other *as they are*. . . The court is, nevertheless, entirely sensible of the peculiar character of this case, produced by the odious circumstances of color. . . [546] The stigma in our state of society is so indelible, the degradation so absolute, and the abhorrence of the community against the offender, and contempt for the husband so marked and unextinguishable, that the court has not been able, without a struggle, to follow those rules which their dispassionate judgment sanctions." [Ruffin, J.]

Barden v. Barden, 3 Devereux 548, December 1832. "petition for a divorce, in which the petitioner alleged that at the time of the marriage, he knew that the defendant had a child, but he thought it was his; that the defendant, by her artful conduct before the marriage, induced him to believe that she had ever behaved . . virtuously except in the instance

[1] Act of 1823. Tay. Rev., ch. 1229.
[2] Rev., ch. 406.

above mentioned, which she pretended was the result of her attachment to him; that soon after the marriage, he discovered that the child was a mulatto, upon which he had instantly parted from her. . . his Honor dismissed the petition, and the plaintiff appealed."

Judgment reversed and the cause remanded: [550] "if it should upon the proofs turn out, that the child is of mixed blood, that the petitioner and defendant are white persons, and that he believed at the time of the marriage, that the child was white, and that belief was created by the representations of the defendant, that it was the offspring of the petitioner himself, and that upon inspection at that time, the real color was not so obvious as to be detected by the petitioner [[549] 'although it were so deep as to lead to the belief now, that it is the issue of a father of full African blood'], or a person of ordinary . . intelligence, . . he would be entitled to a judgment of divorce . . This is a concession to the deep rooted and virtuous prejudices of the community upon this subject." [Ruffin, J., "hesitante."]

Boyd v. Hawkins, 2 Dev. Eq. 195, December 1832. In 1824 Alexander Boyd [197] "conveyed by deed of trust . . as a security . . a very large estate . . about 140 slaves, . . [198] Alexander Boyd owed a debt to . . Burwell of about $20,000, for securing which, there was a deed of trust for about ninety of the slaves . . [199] Hawkins [who 'purchased nearly all the property'] . . refused to deliver the negroes conveyed to Burwell, until the crops were finished,"

Turner v. Cape Fear Navigation Co., 2 Dev. Eq. 236, December 1832. The corporation [238] "had purchased a number of negroes, who were placed upon the river below [Fayetteville] . . to remove obstructions; . . that white laborers could not be employed to work in the low country,"

Hunt v. Bass, 2 Dev. Eq. 292, December 1832. [297] "the refusal to sell the land instead of the negroes, although importunately urged to do so"

Bullock v. Bullock, 2 Dev. Eq. 307, December 1832. [308] "unto my son James . . my two black-smiths,"

Cowan v. Silliman, 4 Devereux 46, December 1833. "Received [in 1818] . . four hundred and seventy-five dollars . . in full payment of a negro woman"

Gregory v. Perkins, 4 Devereux 50, December 1833. "The deed [dated 1826] . . purported . . to convey two female slaves, one of the age of twenty, and the other of nineteen years, . . upon the consideration of $400, . . agreed by parol, that . . Perkins [the vendor] might at any time redeem the negroes upon the payment of $400, and in the mean time keep them upon an annual hire of $40. . . Perkins retained the possession of the slaves . . [51] for three years and a half, and until each of them had two children; when . . the six were sold under execution."

Walton v. Stallings, 4 Devereux 56, December 1833. "a female slave and her child . . [57] in September 1831, . . were worth $325 dollars."

Dowd v. Davis, 4 Devereux 61, December 1833. "the plaintiff declared against the defendant for harboring a female mulatto . . Lydia Burnet, who had, with four others, been bound to him by the county court . . and who had absconded from his service. . . [62] the plaintiff . . produced the order of the County Court, for binding the apprentice to him and the following indenture: . . 'Gilmore, Esq. chairman, . . on behalf of the justices of said county . . in pursuance of an order of the said County Court . . doth . . bind unto the said C. D. five certain, etc. with the said C. D. to live after the manner of servants until they shall attain the age of twenty-one years, they being born of a free woman and begot by a negro slave, . . they shall not at any time absent themselves from their said master's service without leave, . . And the said C. D. doth covenant . . that he will constantly . . provide for the said servants . . sufficient diet, washing, lodging and apparel fiting [*sic*] for servants of color, and also all other things necessary both in sickness and in health.' . . the presiding Judge [of the lower court] held the indenture to be so defective as not to create the relation of master and servant between the plaintiff and the apprentice, and that if the latter upon arriving at the years of discretion, chose to leave the service . . no action could be maintained against any person for harboring her. . . the plaintiff suffered a nonsuit"

Nonsuit set aside and a new trial awarded: [63] "The 19th and 20th sections of the act of 1762[1] . . direct the County Courts to bind out apprentices, . . every female to some suitable employment . . the master . . shall teach, or cause him or her to be taught to read and write, . . that the binding . . shall be by indenture, . . [65] The indenture . . [66] does not specify 'the suitable employment' to which this female should be bound, nor . . contain any covenant . . for teaching . . her . . to read and write. . . the omission . . constitutes a very serious objection to the instrument. . . [But does] [67] not annul the instrument so as to prevent the relation of master and servant from having been created by it; and we rejoice that we can thus decide, as . . this defective instrument is copied from a form . . in *Haywood's Justice*, a book of general use in this State, and there is great reason to fear that most of the indentures recently taken are equally faulty. . . [69] the court . . feels it a duty to call the attention of the Justices . . of all the counties in the State, to the indentures which have been taken . . so that wherever they are defective, new ones may be required, stipulating for all the obligations which ought to be found in them, and on failure of the masters to comply . . [70] to cause the indentures to be vacated, and the apprentices placed with new masters under regular indentures. . . also that with respect to colored apprentices the law requires a bond to be given, not to remove them out of the county, and to produce them before the court at the expiration of their term of service." [Gaston, J.]

[1] Rev., ch. 69.

Mushat v. Brevard, 4 Devereux 73, December 1833. "The slave . . was set up by a crier . . [74] and bid off by the plaintiff and knocked down to him as the purchaser, when the crier . . said to the slave . . 'there is your master,' . . There was no delivery proved by actual corporal touching."

Barton v. Morphis, 4 Devereux 240, December 1833. "Trover for a negro slave Lary, . . The plaintiff proved by a witness, (Turner,) a confession made by the defendant in a conversation with a runaway slave named Jack, sufficient to authorise a jury to find that a conversion had been made by the defendant." Turner deposed [243] "that he saw Jack in the fall of the year 1827—that he was then a runaway—that he made certain disclosures to him, relative to the conduct of the defendant, in sending away the slave of the plaintiff, and said that a negro by the name of Joe, could give information, which would detect the defendant at any time. . . Thompson's Larry . . informed . . Stewart, that the defendant and Jack could be caught at night [in December 1827], at a little out-house in the defendant's fields . . When they got there, he saw and heard, what he had related in court." Turner also deposed [242] "that in the conversation which he overheard with Jack and the defendant, the latter said he would buy him out of the woods." [240] "The credit of Turner was attacked, and to prop . . him the plaintiff introduced several witnesses." [242] "Watts proved that the defendant admitted that he had purchased Jack for the price of $200, in January, 1829." Thomas proved: "The night the party went to apprehend Jack, the defendant left the party and again rejoined them, when he told the company that he had seen Jack, and that they had agreed to meet at the school house, where he had promised to pay him some money. At 10 o'clock the defendant, Thomas and Jack came to the school house, when after some management, Jack was arrested by the rest of the company." [240] "The testimony of these witnesses was objected to by the defendant, as being irrelevant . . but it was admitted."

Judgment for the plaintiff, affirmed: [242] "The evidence . . was material to show an intimacy between Jack and the defendant."

White v. White, 4 Devereux 257, December 1833. See same *v.* same, p. 67, *infra*.

Harriss v. Richardson, 4 Devereux 279, December 1833. "the slave Lydia . . had been sold . . by order of the County Court . . on the petition of the guardian, setting forth that his ward had no other property than the mother of Lydia and her three children, which were all expensive to her."

Bank v. Newbern, 4 Devereux 297, December 1833. [298] "the Sheriff sold [four] negroes . . and applied the proceeds . . to the satisfaction of those executions,"

State v. Seaborn, 4 Devereux 305, December 1833. "The prisoner was indicted for . . Arson. . . [306] admitted that he had the money [of Smith, whose house was burnt] in his pocket when the house was

burning, but said that he had received it from a negro Harry, the slave of Smith."

State v. May, 4 Devereux 328, December 1833. "an Indictment under the act of 1779,[1] for stealing a slave. . . the negro had left his owner . . on the 19th or 20th of March, and on the 30th . . the prisoner under a feigned name, sold the negro [in South Carolina], also under a fictitious name . . the prisoner offered to prove the issuing of a State warrant against one William May, Hardy May and the prisoner, for the same offence for which he was now indicted—that William May had absconded from the State in consequence thereof, having conveyed a negro woman and child to Mrs. Lynch, to compensate her for the loss of Harry. . . also . . the confessions of William May, that he alone was guilty of stealing the slave. . . objected to . . His Honor . . rejected [the confessions] . . The prisoner then proved . . that he . . had not been seen in that neighborhood for five or six years." Verdict of guilty. Judgment of death affirmed.

State v. Edmund (*a slave*), 4 Devereux 340, December 1833. "an indictment under the act of 1825, c. 22, for concealing a slave on board of a vessel, with the intent . . of conveying said slave beyond the limits of the State, and of enabling her to effect her escape . . the prisoner was . . the property of one West, of Virginia; that he had absconded several years before from his master's service—had passed as a free man, and acted as Steward on board the brig *Fisher*. . . [341] Green, the alleged owner of the slave concealed, was a free man of colour, a dark mulatto, and a resident of this State. . . The jury found 'the prisoner . . guilty of the felony of concealing, conveying and carrying as charged in the . . indictment.' . . motions for a new trial, and in arrest of judgment" [because "the prisoner, being a slave, was neither mariner nor person within the meaning of the act; and that Green . . being a mulatto, was not a citizen of the State"] overruled, and sentence of death pronounced.

Judgment reversed, and a *venire de novo* awarded: the verdict is "too ambiguous to found a judgment on," [Ruffin, C. J.] [343] "By the laws of this State, a free man of colour may own . . lands and personal property, including slaves. . . the Legislature meant to protect the slave property of every person, . . entitled to hold such . . the owner is a citizen within the meaning of the act . . [344] a slave is a person capable of committing crimes, and subject to punishment." [J. J. Daniel, J.]

White v. White, 1 Dev. and Bat. 260,[2] December 1833. Joshua White, in 1776, executed the following deed: "I . . from mature and deliberate consideration and conviction . . being fully persuaded that freedom is the natural right of all mankind, and that no law moral or divine, has given me a right or property in the persons of any of my fellow-creatures; and being desirous of fulfilling the injunctions of our Lord

[1] Rev., ch. 142.

[2] See also same *v.* same, 4 Devereux 257.

and Saviour, by doing to others as I would be done by, do therefore declare, that having under my care, a negro girl . . Hagar, aged about ten years, I do . . hereby release unto . . Hagar, all my right . . to her person, or any estate which she may acquire, after she shall attain to the age or eighteen." The deed was never delivered.[1] [261] "Joshua White sent . . Hagar to his son Jacob White, with whom she and her children lived many years. . . he [Jacob] frequently declared that he had no title to them, . . While the negroes were in the possession of Jacob, they refused to labor on his plantation, upon which, on one occasion, he told an uncle of his to take them, and do what he pleased with them. . . Joshua White . . by his will [proved in 1804] devised to . . Jacob . . 'every other article that I have already possessed him with.'" [4 Devereux 257] "in a conversation with the girl, after the death of his father, [Jacob] . . told her he would keep her no longer, that he had kept her in conformity with a promise made to his father, until she was eighteen years old, and that she should go to her protectors." In 1809 Jacob executed the following deed: [1 Dev. and Bat. 261]: "I . . in consideration of the love . . I have . . towards the Society of Friends, . . have given . . Mordecai Morris, Joshua Trublood and others, trustees for the said Society, . . for the benefit of the said society, all my right . . in certain negroes ['among whom were Hagar and her children,'] . . to hold the said negroes to them and their successors . . to the . . protection of the said society." The negroes remained in Jacob White's possession, "with the consent of the trustees, until his death in 1816, and after his death, in that of his widow, until her death in 1823. . . No slaves were mentioned in Jacob's will, and after the execution of it, he frequently declared that he did not own any." The plaintiff is one of Jacob's children, his residuary legatees. [262] "In . . 1820, . . the plaintiff claimed these negroes from one of the trustees . . but he refused to surrender them, . . This claim was repeated with similar results in 1824, and again in 1831, . . In 1827, a general agent of the society hired out all the slaves belonging to it, . . The principles of the society in respect to slavery were . . made part of the case. . . they deny its morality; but submitting to the laws, they hold their slaves as property; claiming a dominion over them, but exercising that dominion for the benefit of the slaves, and for the promotion of individual cases of emancipation."

Judgment for the plaintiff reversed, and a new trial granted: [266] "emancipation was not favoured in the province, . . [267] and if this deed [of 1776] be construed as conferring it immediately, the necessary consequence . . would be an immediate forfeiture. . . [271] the defendant was protected by the statute of limitation," [Ruffin, C. J.]

Fraser v. Alexander, 2 Dev. Eq. 348, December 1833. Sarah Carson's will: "It is my will that my Executor sell my negroes at private sale, giving to each one of them a choice of masters, that can make a choice."

[1] See same *v.* same, 4 Devereux 257.

Jones v. Jones, 2 Dev. Eq. 387, December 1833. Codicil, 1832: [388] "I further give to be divided, two infant negroes . . born since the executing of my will, between my son . . and my wife"

Clarke v. Clarke, 2 Dev. Eq. 407, December 1833. [408] "that Selby died greatly indebted, and that under executions . . all his slaves were sold,"

Smith v. Barham, 2 Dev. Eq. 420, December 1833. Held: [429] "slaves . . are not wasted by use, and if they are, that waste is supplied by their issue, . . With respect to them, service and not increase is the use of the tenant for life."

Redmond v. Coffin, 2 Dev. Eq. 437, December 1833. See same *v.* same, p. 61, *supra*. [448] "The cause was removed to this court again, at June term last, when the defendants excepted to the report:" [456] "report confirmed, and the plaintiff must be declared entitled to all the slaves . . yet in this State, and to recover from all the defendants the . . money reported to be due for the residue and for the value of the four slaves sent away, and the hires of all the others, and interest upon those several sums; for which . . the agents of the society, are liable to her in the first place," [455] "so gross a case of bad faith, and wilful resistance to the cause of justice, and the claims of property, . . as subjects the defendants to account upon the most rigorous principles," [Ruffin, C. J.]

Arnold v. Arnold, 2 Dev. Eq. 467, December 1833. "the defendant owned a female slave, who had then six children, and was expected shortly to have another, and agreed, if allowed to select . . [468] three of the children to be kept by himself, to sell the mother and the remaining four children, including the unborn one, to the plaintiff, at the price of $1000; whereof, $100 was to be, and was, paid down, and the balance payable upon the delivery of the slaves, which was to be made as soon as the mother should recover after the birth of the next child. . . but that the defendant refused to convey, and had sold three of the children, and another had been sold under execution against him; . . [469] Several witnesses stated that the negroes were worth more than $1000."

Governor v. Freeman, 4 Devereux 472, June 1834. The administrator "had hired the slave to . . Doughtry, one of the residuary legatees . . for a year; that during that year Doughtry had sold the slave to one . . who had removed him out of the State."

Perry v. Maxwell, 2 Dev. Eq. 488, June 1834. Will of Outerbridge, who died in 1824: [491] "if negro property has to be sold in any case to make payment [of the notes bequeathed to my grandchildren], I . . empower my . . Executors to purchase young negroes, . . and then hire out what negroes they may purchase."

Erwin v. Greenlee, 1 Dev. and Bat. 39, December 1834. "At the [sheriff's] sale, the defendant [whose negroes had been levied upon] stood by, and publicly recommended the negro as an intelligent boy. It was proved that the boy was an idiot, and that the defendant knew it."

State v. Negro Will (slave of James S. Battle), 1 Dev. and Bat. 121, December 1834. Special verdict: "the deceased, Richard Baxter, was the overseer of said Battle, . . early in the morning of the 22d . . January last, . . [122] the prisoner had a dispute with slave Allen, . . a foreman on the same plantation . . about a hoe which the former claimed to use exclusively on the farm on account of his having helved it in his own time; but which the latter directed another slave to use on that day. . . angry words passed . . upon which the prisoner broke out the helve, and went off about one fourth of a mile to his work, . . packing cotton with a screw: that very soon after . . the foreman . . informed the deceased . . who immediately went into his house: . . his wife was heard to say, 'I would not my dear,' to which he replied in a positive tone of voice, 'I will:' . . came out of his house . . told him [the foreman] that he . . was going after the prisoner, and directed the foreman to take his cowhide and follow after him at a distance; . . took his gun, mounted his horse and rode to the screw, . . about six hundred yards, . . dismounted . . walked directly to the box on which the prisoner was standing engaged in throwing in cotton, and ordered the prisoner to come down: that the prisoner took off his hat in an humble manner and came down: that the deceased spoke some words[1] to the prisoner, which were not heard by any of the three negroes present: that the prisoner thereupon made off, and getting between ten and fifteen steps from the deceased, the deceased fired upon him: . . and the whole load lodged in prisoner's back, covering a space of twelve inches square: . . might have produced death: . . [123] after retreating in a run about one hundred and fifty yards . . the deceased directed two of the slaves present to pursue him through the field, saying that 'he could not go far;' . . laying down his gun, mounted his horse, and having directed his foreman . . to pursue the prisoner likewise, rode round the field and headed the prisoner: . . dismounted, got over the fence . . the prisoner . . changed his course to avoid the deceased, . . the deceased came up with him, and collared him with his right hand: . . *that it was not more than six or eight minutes* from the time of the shooting, till the slaves in pursuit came . . up, and being ordered by the deceased, one of them attempted to lay hold of the prisoner, who had his knife drawn, and the left thumb of the deceased in his mouth: that the prisoner struck at said slave with his knife, missed him and cut the deceased in his thigh. That in the scuffle . . the deceased received from the prisoner a wound [[124] 'about four inches long, and two inches deep'] in his arm which occasioned his death; and that the deceased had no weapons during the scuffle. That soon after, the deceased let go his hold on the prisoner, who . . escaped: . . soon recalled the slaves, . . and as they came up . . said, 'Will has killed me; if I had minded what my poor wife said, I should not have been in this fix.' . . [124] he died on the same day . . the prisoner went the same day to his master, and surrendered himself: that the next day, upon being arrested and informed of the death of the deceased, the prisoner exclaimed, '*Is it possible!*' and appeared

[1] [164] "a communication of his purpose."

so much affected that he came near falling, and was obliged to be supported. . . judgment that the prisoner was guilty of murder, and . . sentence of death; . . the prisoner appealed to the Supreme Court."

[172] "*Per Curiam.*—Judgment upon the special verdict, that the prisoner is *not* guilty of the *murder*, . . but is guilty of the *felonious slaying . . Richard Baxter.*" Gaston, J.: [165] "Had this unfortunate affair occurred between two freemen, . . the homicide could not have been more than manslaughter. . . Unconditional submission is the *general* duty of the slave; unlimited power, is in general, the *legal* right of the master. Unquestionably there are exceptions to this rule. It is certain that the master has not the right to slay his slave, and I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life. . . [166] There is no *legal* limitation to the master's power of *punishment,* except that it shall not reach the life of his offending slave. It is for the legislature to remove this reproach from amongst us, if, consistently with the public safety, it can be removed. . . the act of the prisoner in attempting to evade punishment was a breach of duty. This act, however, was not *resistance* nor *rebellion,* and it certainly afforded no . . excuse for the barbarous act which followed. . . [167] But after the gun was fired, all must see that a vast change was effected in the situation of the prisoner; . . will the law . . allow in such a case ['where the slayer is a slave, and the slain is the representative of his master'] *any* passions, . . however strongly provoked . . to repel the allegation of malice? . . [171] is it a *conclusion of law,* that such passions must spring from diabolical malice? . . I cannot believe that this is the law of a civilised people and of a Christian land. . . [172] Express malice is not found by the jury. From the facts, I am satisfied as a man, that in truth malice did not exist, and I see no law which compels me as a judge to infer malice contrary to the truth."

Lanier v. Ross, I Dev. and Bat. Eq. 39, December 1834. [40] "a brother of the plaintiff's at the sale of her husband's slaves had purchased a number of them, and left them with her for her use."

State v. Blythe, 1 Dev. and Bat. 199, June 1835. Indictment under the act of 1826, ch. 13, charging that Blythe unlawfully sold spirituous liquors [200] "to certain negro slaves, whose names are to the jurors as yet unknown, . . not having . . any written authority from the owners" The defendant was convicted, and a motion in arrest of judgment sustained. Affirmed: [201] "the indictment does not sufficiently identify the slaves."

Hamilton v. M'Carty, 1 Dev. and Bat. 226, June 1835. [227] "M'Carty . . in consideration of the services of . . Cupid [for two years], doth bind . . himself to pay . . the annual sum of sixty dollars . . and further to . . provide such negro man with good and sufficient food and drink during said term . . and also teach him to the best of his ability the art and trade of boot and shoe making. . . 1827."

Morgan v. Cone, 1 Dev. and Bat. 234, June 1835. [235] "a negro slave, Green, valued at $600;"

Sorrey v. Bright, 1 Dev. and Bat. Eq. 113, June 1835. Will of Diana Sorrey: "I give to . . Simmons . . the following negroes, . . but it is my request . . that . . Simmons will admit said negroes to have the result of their own labour, but ever to be under his care and protection," Simmons was [114] "a resident of . . Virginia, and by the law of that state, bequests for the purpose of emancipation were valid."

Held: the bequest is void. [115] "The capacity to make the will is derived from our law, and the validity of its provisions is to be ascertained from the same source."

Torrence v. Graham, 1 Dev. and Bat. 284, December 1835. "James M'Knight, in . . 1800 intermarried with Betsy Torrence, . . and soon after, upon his leaving his mother-in-law's house with his wife to settle to themselves, the old lady proposed to give him two negro girls; but he declined to receive them, stating that he did not wish to own that kind of property, as he had conscientious scruples about holding slaves. His mother-in-law insisted . . alleging that her daughter was weakly, and would need their assistance; but upon his still refusing, she said she would send them, not as his, but as the property of Betsy . . [285] and upon these conditions he agreed . . After the death of Ann Torrence [Betsy's mother], the executors came to demand the slaves of M'Knight, . . he was willing to deliver them up, but his wife was not; . . agreed to leave it to arbitrators, 'to decide what Mrs. Torrence intended' . . decided that it was the old lady's *wish* for . . Betsy . . to have them during her life,' . . Betsy . . died before her husband in 1830." The jury decided that it was a loan for life.

Jones v. Young, 1 Dev. and Bat. 352, December 1835. The executor of the plaintiff's father [353] "had urged several persons to attend the sale of the slave; . . and while the officer was crying the slave, he had told a negro trader that he thought the plaintiff's title was not good, though probably the plaintiff would sue for the slave, and he asked the trader to purchase."

Henry v. Patrick, 1 Dev. and Bat. 358, December 1835. "the defendant was a negro-trader, and the plaintiff had purchased . . a negro boy, named Miles, with liberty to return him and take another, if, upon trial, he should not like him: that some time afterwards, the defendant was on his way to the south, with a parcel of slaves, and encamped on the public road, within two or three miles of the plaintiff's house: that plaintiff came to the camp, and proposed to return . . Miles, and take another; . . defendant assented: . . plaintiff then selected . . Jacob, fixed upon the price, which . . should be paid by the bond of the defendant, which the plaintiff then held, and the balance in money:"

Young v. Carson, 1 Dev. and Bat. 360, December 1835. Young's will, 1833: "doing this murder is my own fault . . and I wish my dear wife . . to get Stanford in her third of the property if she chooses, for she has raised him."

Abram Bryan v. Wadsworth, 1 Dev. and Bat. 384, December 1835. "an action of trespass *vi et armis*, brought by the plaintiff to try his right of freedom. . . The plaintiff was originally the slave of . . Elizabeth Henry, . . who at the March Term, 1808, of the County Court, filed the following petition, . . 'that she is possessed of the following slaves, whose meritorious services she desires to reward with the blessing of freedom, viz. [Abram's name is included in the list] . . She prays that she may be permitted to emancipate the said slaves at such time as she may think proper.'" The court [385] "ordered that the petitioner have the permission prayed, upon complying with the directions of the acts [1] of General Assembly in such cases provided. . . June 1808, . . Elizabeth Henry . . signed, sealed and delivered two penal bonds, one . . for . . two hundred pounds, . . 'The condition . . is such, that whereas . . permission has been granted to Elizabeth Henry, . . to emancipate . . a certain negro slave named Abram: Now, if the said negro . . shall, during his residence in . . North Carolina, behave himself as an honest and peaceable citizen, then the above obligation to be void.' The other . . for . . one hundred pounds, conditioned . . 'Now if the said negro . . shall not become chargeable to the parish . . of any . . county of this state, then the above obligation to be void.' These bonds were filed in the office of the clerk of . . County Court, . . [386] To some of the slaves mentioned in the petition, . . Elizabeth Henry executed and delivered deeds of manumission, (although she still continued in the actual possession of them,) but to . . Abram, she made no such deed, . . but . . 1820 . . sold and delivered him to . . Wadsworth, from whom the defendant purchased him;"

Judgment for the defendant affirmed: [387] "The license is a permission to do the act, and this . . the Court is authorised to grant, when it shall have adjudged that the slave has performed extraordinary services, meriting the boon . . The adjudication and the license do not *constitute* the manumission, they only legalise it. . . [388] The petition upon which the County Court acted in this instance, is of a very extraordinary character." [387] "when the ordinary course of proceeding in these cases, is attended to, and which mode, we have no doubt, was that in the contemplation of the legislature, there needs nothing more to show the act of the master, than his petition, which is a part of the record . . [388] This petition usually sets forth that the petitioner . . desires *then* to confer [freedom] . . and prays that he may be permitted so to do. The Court proceeds to examine . . adjudges . . and grants the permission. These entered of record, make the liberation required by law." [Gaston, J.]

Clancy v. Overman, 1 Dev. and Bat. 402, December 1835. "This indenture, . . 1827, . . Witnesseth that . . Clancy doth bind unto . . Overman a negro boy, named Essex, for . . three years, . . during all which time the . . boy his master shall . . serve, his . . commands . . obey; he shall not absent himself . . Clancy doth further agree to fur-

[1] Acts of 1777 (Rev., ch. 109) and of 1796 (Rev., ch. 453).

nish the . . boy with materials for clothing: And . . Overman doth . . agree . . that he will teach . . the said negro boy, the art and mystery of the coach-making business; that he will sustain the expense of making his clothes, and that he will provide . . sufficient diet and lodging." The plaintiff [403] " offered evidence to show that . . Essex did not understand the coach-making business at the expiration of his term . . The defendant . . offered evidence to show that he made all proper exertions . . but that said slave had not capacity enough to learn the coach-making business. . . Essex . . frequently, in the absence . . of the defendant, would go to a neighbouring store and procure spirits, . . become moderately intoxicated. . . when he [the defendant] would instruct Essex . . and threaten to punish him if he did not exert himself to learn, as soon as he, the defendant, was absent, Essex would declare that he did not care about learning the trade; it was no profit to him; and if he could avoid the lash, it was all he cared for. . . evidence of the declarations of Essex . . rejected"

Judgment for the plaintiff reversed and a new trial awarded: [405] " an engagement to teach . . a trade, is not an engagement that the apprentice will learn that trade. . . [406] the evidence offered of the acts and declarations of the apprentice was improperly rejected. . . because his disposition and temper are subjects of investigation;" [Gaston, J.]

Bird v. Graham, 1 Dev. and Bat. Eq. 168, December 1835. [170] " The benefit from her labour was a slender compensation for rearing her children;"

Jacocks v. Bozeman, 1 Dev. and Bat. Eq. 192, December 1835. "At the request of the widow, . . [the administrator] sold all the effects, except the negroes, . . retained the possession of the slaves, . . and hired them out until her death, . . and out of those hires he paid, also by her consent, that balance of the testator's debts."

Worth v. McAden, 1 Dev. and Bat. Eq. 199, December 1835. [202] " he received eight hundred dollars . . on account of a negro man [in 1817] . . [205] five hundred and twenty-one dollars, at which price he obtained Milly"

Koonce v. Bryan, 1 Dev. and Bat. Eq. 227, December 1835. [231] " the husband . . said he was willing to settle his wife's negroes on her, . . and requested Bryan to have a deed prepared, . . so drawn as to give to his wife no power . . over the increase of the negroes born . . during his life, as he could not nor would not raise young negroes for any person but himself."

Steed v. McRae, 1 Dev. and Bat. 435, June 1836. " to serve him as overseer, during . . 1832, for . . one hundred and twenty-five dollars, or a certain share of the crop, at the election of " the overseer. He elected the latter.

Gibbons v. Dunn, 1 Dev. and Bat. 446, June 1836. See same *v.* same, p. 38, *supra.* [450] " the death of the mother [of the testator's chil-

dren] was uncertain, and might be prolonged to such a period, that Nell would be too old to breed, and might be an expense instead of a benefit." [J. J. Daniel, J.]

Jones v. Sasser, 1 Dev. and Bat. 452, June 1836. [455] "the plaintiff . . had lived with his father . . as a manager or overseer of his slaves and other property."

Skinner v. White, 1 Dev. and Bat. 471, June 1836. "an action of slander, . . the defendant said of the plaintiff, 'that he harboured a runaway negro . . and he could prove it; and he should be prosecuted for it.'" The jury found the defendant guilty, and "assessed the plaintiff's damages to three hundred and twenty-five dollars,"

Judgment of nonsuit, affirmed: the words were not actionable.

Hamlin v. Alston, 1 Dev. and Bat. 479, June 1836. In 1820 the executors "took all the slaves . . and hired them out every year, until . . 1832; first, as executors, and afterwards as guardians of the children."

Carr v. Holliday, 1 Dev. and Bat. Eq. 344, June 1836. Carr was "found to be a lunatic . . since 1827." Thereafter, "the defendant . . obtained from him . . several slaves,"

Hite v. Goodman, 1 Dev. and Bat. Eq. 364, June 1836. "Certain runaway slaves having committed great outrages in the county of Gates, several magistrates of that county [the defendants] assembled at the court-house to deliberate upon the propriety of calling upon the colonel of the county to order out the militia for the purpose of apprehending them. . . during the recess between the regular terms of the County Court, and . . 'Ordered, that a reward of sixteen hundred dollars be given for the apprehension of negroes Jim, etc., (four in number,) or four hundred dollars for each.' The plaintiffs alleged that three . . were taken by them and one Collins: that . . Collins, after having assigned to one of them his interest in the claim for a reward, had fraudulently dismissed a suit to recover it. The prayer of the bill was for payment of . . twelve hundred dollars,"

Dismissed: [366] "If the plaintiffs have a well founded claim against the county, it ought not to be doubted but that, on proper application, they will obtain full justice."

Bell v. Culpepper, 2 Dev. and Bat. 18, December 1836. "the plaintiff claimed the slaves under a parol gift to his wife, made by her father . . in . . 1802, . . he intermarried with the daughter of the donor in 1820; that he soon after went off to house-keeping; that the slave Esther being then confined in childbed, was not taken home with him immediately, but was sent to him about a year afterwards, and, together with her child, remained with him more than twelve months, when she ran off and returned to her old master. . . [19] his father-in-law said he . . would keep them until his son-in-law should get out of debt. . . bequeathed to the plaintiff's wife and children a negro girl . . a child of . . Esther. . . a residuary clause directing the remainder . . to be sold"

State v. Ritchie, 2 Dev. and Bat. 29, December 1836. The defendant, together with Hill, was convicted upon an indictment charging that they "unlawfully[1] did play at a game of cards with two slaves,"

Whittington v. Whittington, 2 Dev. and Bat. 64, December 1836. Petition for a divorce stated [65] "that the defendant [after their separation] had indulged in criminal intercourse with both whites and mulattoes: . . and that she had three illegitimate children, one of which was a coloured child," Petition dismissed. Judgment affirmed.

Knight v. Leak, 2 Dev. and Bat. 133, December 1836. [134] "the sheriff 'did levy on a certain negro boy . . Bob, about fourteen years old, . . and having advertised, according to law, did expose . . to sale at the Court-house to the highest bidder, when . . Leak became the highest . . bidder, at the sum of three hundred and thirteen dollars, twenty-five cents;'"

State v. Ephraim (*a slave*), 2 Dev. and Bat. 162, December 1836. "an application for the discharge of the prisoner . . from confinement in the jail . . [Judge] Gaston was applied to for a writ of *habeas corpus*, which he issued, . . made returnable before the judges of the Supreme Court. The sheriff . . returned . . that the prisoner was committed to his custody by the Superior Court . . [163] charged with the murder of . . Venters . . an indictment was found against the prisoner . . the jury came into court, and declared . . that they were not likely to agree, however long they were kept together. Two . . stated that they were unwell; . . the court proposed to discharge the jury, and asked the consent of the prisoner's master and counsel, . . refused: whereupon . . the court in the exercise of its discretion . . ordered . . the jury to be discharged; . . ordered the prisoner to be remanded to the jail . . to await his trial at the next term . . before another jury."

Held: [164] "the prisoner cannot be tried again, but is entitled to his discharge, . . as if he had been acquitted by the jury. . . [176] upon the payment, by his master, of such costs as he is legally liable for, and upon his entering into recognizance for the appearance of the prisoner at the next term of the Superior Court, to answer any other charge the state may have against him." [Ruffin, C. J.]

State v. Samuel (*a slave*), 2 Dev. and Bat. 177, December 1836. "an indictment for murder, . . In proving the case for the state, the solicitor called as a witness, a slave named Mima, who was the only person that saw the rencounter . . The prisoner's counsel objected . . upon the ground that she was the wife of the prisoner; . . Lea, the owner of the witness, . . testified that the prisoner and . . Mima, had cohabited as man and wife for about ten years successively, and had had five children; that in . . August last, he heard a quarrel . . when the prisoner took a bundle of clothes, . . saying, he intended to part with his wife. Lea compelled the prisoner to leave the clothes, and told him to bring an order

[1] "The act of 1830, ch. 10, was inadvertently omitted in the Revised Statutes of 1836, but was re-enacted in 1850, (see Acts of that year, ch. 186,)." Note by reporter, second edition.

from his master . . In the course of a fortnight, the prisoner returned with an order . . procured the clothes, and was commanded by Lea not to return. Soon afterwards the deceased applied to Lea for permission to take Mima as his wife, and upon being told that he might do so, he took her as a wife accordingly. His Honor overruled the objection to the competency of . . Mima, and the prisoner was convicted. . . [178] judgment of death pronounced,"

Judgment affirmed: [183] "the witness was never, in law, the wife of the prisoner. This conclusion is in no degree shaken by the incidental notices of this connection between slaves, . . found in some of our statutes. In the act of 1729,[1] . . the ninth section . . declares, that nothing in that act shall be construed to hinder neighbours' negroes intermarrying together, license being first had of their several masters. . . this proviso can mean only that concubinage, . . voluntary on the part of the slaves, and permissive on that of the master . . with which alone, perhaps, their condition is compatible." [Ruffin, C. J.]

Black v. Ray, 1 Dev. and Bat. Eq. 443, December 1836. "Black died in . . 1807, having . . bequeathed certain slaves to his widow . . for life . . [who] sold some of them absolutely,"

Willis v. Hill, 2 Dev. and Bat. 231, June 1837. "the defendant, prior to . . October, 1833, was in partnership with . . in the purchase of slaves:"

Cole v. Terry, 2 Dev. and Bat. 252, June 1837. In 1804 [253] "the slave Charlotte, then about two years of age" was sold.

Hamlin v. Alston, 2 Dev. and Bat. 269, June 1837. [270] "The defendant made an agreement with [a third person, in whose custody a negro woman and a family of small children had been left, and from whose house they [269] 'could not be readily removed'] . . to keep them for one year for . . fifty dollars."

State v. Jesse (*a slave*), 2 Dev. and Bat. 297, June 1837. "The prisoner was tried . . upon an indictment containing two counts, the first of which charged him with a rape; and the second with an assault with intent to commit a rape, upon the body of a white female. . . acquitted upon the first . . but found guilty upon the second," in which there was [300] "no application of the term 'feloniously' to the act of assaulting." [298] "it was contended for the prisoner, that he was under the age of fourteen years at the time, . . [299] judgment of death"

Held: "omission in the indictment . . is fatal to the sentence passed on the prisoner. . . [301] judgment of death is erroneous, and must be reversed; and as the Superior Court has no jurisdiction . . there can be no judgment upon this indictment; but it must be arrested;" [Ruffin, C. J.] See same *v.* same, p. 81, *infra.*

Hatchell v. Odom, 2 Dev. and Bat. 302, June 1837. [303] "The plaintiff being about to remove to the west, purchased the slave of the

[1] Rev., ch. 19.

defendant's intestate for five hundred and eighty-four dollars; but it did not appear that there was any warranty of soundness, . . After the plaintiff had commenced his journey, the negro failed in walking from a *caries* of the bone of one of his legs; . . sent him back to . . Vaughan, his agent, to be returned . . When informed . . the intestate desired Vaughan to return the negro to him, and promised that he would either cure, or have him cured, or . . return the price. . . placed him under the care of a physician. . . the *caries* was found to be very extensive; and after an operation, the intestate took him home, where . . he still remained . . the disease very seriously affected the value of the slave;"

Held: [308] "the intestate's promise . . was without consideration and void."

Thomas v. Alexander, 2 Dev. and Bat. 385, June 1837. "an action . . for harbouring a runaway slave, in violation of the act of 1791,[1] . . his Honor . . instructed the jury . . 'that if they believed from the testimony, that the slave was . . at his [defendant's] plantation, and was not concealed . . the defendant was entitled to their verdict.' The jury found for the defendant;" Affirmed.

State v. Haney, 2 Dev. and Bat. 390; *State v. Hardin, ibid.* 407, June 1837. [390] "The jurors . . present, [first count:] that . . Hardin, . . Haney and . . Williams, . . one negro-man slave, . . Eli, . . the property of Nancy Davis, . . feloniously did steal, take and carry away, . . [391] And . . [second count:] feloniously by seduction, violence and other means, . . Eli . . did take . . with an intention . . to sell, dispose of and convert to their own use," "Haney, by consent, was tried alone; . . the only witness for the prosecution, was one Robins . . an accomplice," [408] "He testified [in Hardin's trial] that on Sunday, the next day after the disappearance of the slave [in July 1836], he saw, at a meeting-house . . Haney, . . Haney informed him, that a negro had come to him . . a little before day; and then requested witness to . . tell Hardin to meet him at . . Webb's old field that night, . . remarked, 'Hardin has missed the one he has been trying to secure; but good luck will come after bad. Tell him, this boy has come to me.' . . they [witness and Hardin] went together to the place and at the time appointed, and there found Haney. Upon a whistle by Haney, a large negro-man came up to them; . . Haney said, 'he came from the widow Davis. . . You, Robins, must take him off. It will be a safe trip, as the widow has not energy to press like some people. . . Hardin will keep him till you get ready to start.' . . Hardin . . proposed that the negro and the witness should stay in the woods until he should go to see [if there was anyone in his house.] . . came the next morning with food for them. It was then agreed between Hardin, Robins and the negro, that Robins should take the negro to South Carolina and there sell him; that he should go that day, and make his preparations; and that the negro should meet him the next day at a point designated on the road. . . [409] the negro met him according to appointment; and Robins and . . Williams, carried

[1] Rev., ch. 335, sect. 4.

him to South Carolina and sold him for nine hundred dollars; of which part was paid to Williams; . . one hundred and forty-five dollars . . to Haney, and two hundred and fifty-five dollars to . . Hardin. Upon his cross-examination, the witness stated that his habits had been moral . . until he had become acquainted with the three persons charged . . who influenced him to join an association which they called a *club*, and represented to have members spread over the country; and that this was his first adventure in the way of selling slaves. But when further pressed, he admitted that he had before sold a free negro, named Wingfield for one thousand dollars, of which he gave two hundred dollars to Wingfield himself for agreeing to be sold; two hundred dollars to a man in South Carolina, for helping him to sell the free negro; one hundred dollars to Haney, and ninety dollars to . . Hardin; and that he spent the residue himself. . . when he paid to Haney his share of the price got for Mrs. Davis's negro, Haney said to him and Hardin, 'You know our plan is to steal the negro again and sell him over, so you must make up something to pay for doing that:' . . each . . gave Haney twenty-five dollars more. . . Hardin insisted upon having the largest share, in consequence of 'his having tried so long to get a negro, in which he met with bad luck.'" Haney [392] "was acquitted upon the first count, and convicted upon the second; . . [393] judgment of death," Affirmed.

Hardin was [412] "found guilty generally, upon both counts" [411] "and sentence of death passed;" Judgment reversed, and a [419] "*venire de novo* awarded to the prisoner, Hardin." [413] I. "the larceny in this case, was committed by Haney alone. . . [II.] [419] we have no doubt that his [Hardin's] acts are within the mischief which the legislature[1] meant to remedy; but we cannot find in the act itself a warrant for holding the prisoner, or Robins, or Williams, to be more than accessories to the *felony* of seduction committed by Haney."[2] [Ruffin, C. J.] Daniel, J., concurred. Gaston, J., dissented.[3]

State v. Oxendine, 2 Dev. and Bat. 435, June 1837. "The defendant was indicted . . for an assault and battery, . . appeared and *submitted* to the Court . . fined fifteen dollars, . . and it appearing . . that the defendant was a free negro, and unable to pay the fine . . adjudged . . that the sheriff . . hire out the defendant to any person who will pay the fine for his services for the shortest space of time; . . according to the directions of the act . . passed . . 1831, c. 13. . . defendant appealed . . upon the ground that the act . . was unconstitutional and void."

Judgment reversed: [437] "the defendant not having been *convicted* of an offence, his case was not embraced within that act." [435] "The constitutional question . . has been elaborately . . argued, . . a decision of this question is not necessary for our adjudication"

[1] Act of 1779. Rev., ch. 142.

[2] Followed in State *v.* Martin, p. 156, *infra*.

[3] [424 n. (second edition).] "The acts of 1779, 1848 and 1852, as revised in the 10th section of the 34th chapter of the last Revised Code [1855], are made to conform to the opinion delivered by Judge Gaston in this case." [Reporter.]

Newby v. Skinner, 1 Dev. and Bat. Eq. 488, June 1837. Will, 1834: "directed that three negro slaves, designated by name, and a tract . . should be sold for the payment of his debts:"

Pendleton v. Blount, 1 Dev. and Bat. Eq. 491, June 1837. "Elizabeth Brazier, by her will, gave all her negroes to her 'executor . . to be by him hired out annually . . [492] and the hire . . I leave as a fund for their support when they are too old, or unable to support themselves;' and after sundry particular instructions for their comfort, and for removing them to another State or to Africa, . . 'third [of the residue] to be kept for the benefit of my negroes when he may think they need it.'" Held: "the bequests . . are illegal and void. . . [493] The slaves and said fund belong to the next of kin,"

Tyrrell v. Morris, 1 Dev. and Bat. Eq. 559, June 1837. Tyrrell, "by his will, directed that his negroes should be kept for the support of his wife and children; a part to be employed in cultivating a farm, and the residue hired out, . . [560] The executors from time to time as they were pressed by the creditors, disposed of the negroes;"

Boyce v. Warren, 2 Dev. and Bat. 498, December 1837. "the slave had once belonged to the plaintiff, who . . had been found a lunatic,"

Hobbs v. Bush, 2 Dev. and Bat. 508, December 1837. Several slaves [509] "had belonged to Mary Taylor . . then about fifty years of age, and had been from her birth an idiot."

Mead v. Young, 2 Dev. and Bat. 521, December 1837. A warrant recited "that the plaintiff 'and company' had wounded and beat a slave of the defendant,"

McConnell v. Peobles, 1 Dev. and Bat. Eq. 601, December 1837. Will, 1834: "My will is, that all my negro slaves be laid off into six lots, made equal in value, and then drawn for by my six children," [604] "a very strong inference arises . . that not only the selection of Hannah by Mrs. Smith, was made at the slave station of the trader, but that she and her husband stipulated with the trader as to the amount of the price"

Bethell v. Wilson, 1 Dev. and Bat. Eq. 610, December 1837. The parties to the suit, in 1826, "entered into a co-partnership for the purpose of buying and selling slaves: that the defendant . . was the active partner . . received the capital paid in, purchased a parcel of slaves, carried them to the south and sold them, partly for cash and partly on credit: . . [611] defendant originally resided in the county of Rockingham, in this state, but after his return from the south, removed over the state line into Virginia: . . moved [later] . . to . . Alabama."

Caroline Sampson v. Burgwin, 3 Dev. and Bat. 28, June 1838. "an action of trespass *vi et armis* brought by the plaintiff to try the question whether the defendant had a right to hold her as a slave. . . she alleged that the defendant in . . 1809 . . procured her mother and herself then one or two years old, to be emancipated by the county court . . and . . produced . . a copy of the record . . Upon the petition of . . Burg-

win, Ordered that a female negro slave . . and her child called Caroline . . be emancipated . . proved further by several witnesses that they had known her from eight to twenty years, and had always considered her as a free woman. The defendant then proved by the sheriff . . that in . . 1820 . . he levied an execution against the defendant . . on her, and sold her . . [29] His Honor, in charging the jury, told them . . that the court was not bound to presume . . that the county court had adjudged that the plaintiff had performed meritorious services, particularly as it appeared . . that she was not more than one or two years old when the record was made, . . [30] verdict for the defendant, and the plaintiff appealed."

Judgment reversed and a *venire de novo* ordered: [32] "the minutes state both what he did and what the Court did. . . their united act as appearing of record . . is expressly an immediate emancipation of the plaintiff. . . its efficacy is not impugned by its silence as to meritorious services;" [Ruffin, C. J.]

State v. Jesse (a slave),[1] 3 Dev. and Bat. 98, June 1838. "The prisoner was arraigned on the following indictment . . 'present, that Jesse, a slave, being a person of colour, . . did . . feloniously make an assault, . . with intent . . feloniously to commit a rape upon . . B. W. being a white female, . . contrary to the form of the statute' . . the prisoner pleaded '*autre fois acquit*,' . . [99] the evidence raised a doubt whether a rape had not in fact, been committed; . . The court . . charged . . that if the prisoner, had in fact committed a rape, yet he was not . . entitled to a verdict; . . The jury found the prisoner guilty, . . Sentence of death"

Judgment affirmed: [109] "He could not prove himself guilty of the rape, for the purpose of availing himself of the former acquittal. . . in law, the felonies . . are so distinct . . that an acquittal . . of one cannot bar a prosecution for the other." [Ruffin, C. J.]

State v. Jones, 3 Dev. and Bat. 122, June 1838. "The defendant was indicted for *petit larceny*, in stealing two pigs . . found in the possession . . of a person of color [[123] 'a free negro woman, living in the suburbs of the town'] to whom the defendant had sold them,"

State v. Hathaway, 3 Dev. and Bat. 125, June 1838. "The defendant was tried . . for 'secretly . . and fraudulently harbouring . . a runaway slave,'[2] . . [126] the negro had one or more places of concealment on the land of the defendant, . . declarations of the defendant, that he could have taken the negro if he pleased, but that he would not do so because of the confidence that the slave reposed in him, offers by the defendant to purchase, . . His Honor instructed the jury, 'that if the evidence satisfied them that the defendant had fraudulently and secretly done any act to aid . . knowing him to be a runaway, with a view to make it more easy and safe for him to stay out, or to make it more difficult for his owner to take him, as if he permitted him to make a cave or shelter,

[1] See same *v.* same, p. 77, *supra*.
[2] Rev. St., ch. 34, sect. 73.

or camp upon his land, . . and while there . . informed him when it was safe to go, or when to stay, he was guilty. . . that fraud would be implied if . . the defendant knew the negro to be a runaway' . . convicted and appealed." Judgment affirmed.

State v. Leigh, 3 Dev. and Bat. 127, June 1838. "the Jurors . . present, that . . a certain negro slave Jim, the property of . . Leigh [one of the acting justices of the peace], . . did commit a felony by . . murdering . . Washington, the property of . . Leigh; and that . . Leigh . . well knowing of the commission of the said crime . . refused to issue his warrant for the apprehension of . . Jim," Indictment quashed.

Judgment affirmed: [129] [I.] "the allegations are entirely too vague . . [II.] A master . . is not . . bound, if [the slave is] at liberty, to be . . officially active against him in any stage of the prosecution. . . their relation imposes on him the obligation of the slave's defence," [Ruffin, C. J.]

Lamb v. Gatlin, 2 Dev. and Bat. Eq. 37, June 1838. The will of Spence Hall, who died in 1807, [38] "directed, that his negroes Big George and Little George, should be set at liberty on the 1st January 1820, . . the testator's widow . . sold . . Big George, for . . $300"

Burkhead v. Colson, 2 Dev. and Bat. Eq. 77, June 1838. By Muse's will, dated 1780, he bequeathed to his daughter "a female slave to be delivered to her on her attaining the age of sixteen, or her marriage,"

State v. Manuel, 4 Dev. and Bat. 20, December 1838. "The Defendant . . was convicted of an assault and battery, and . . sentenced to pay a fine of twenty dollars, and it appearing . . that he was a free person of colour and unable to pay . . ordered . . that the Sheriff . . should hire out the defendant to any person who would pay the said fine for his services for the shortest space of time."

Held: the act of 1831, ch. 13,[1] is constitutional: [24] "Upon the Revolution, . . Slaves remained slaves. . . [25] Slaves manumitted here become freemen—and therefore if born within North Carolina are citizens of North Carolina—and all free persons born within the State are born citizens of the State. . . our constitution . . extended the elective franchise to every freeman who had arrived at the age of 21, and paid a public tax; and it is a matter of universal notoriety that under it, free persons without regard to colour, . . exercised the franchise until it was taken from free men of colour a few years since by our amended constitution. But . . the possession of political power is not essential to constitute a citizen. . . [29] the fine . . is not a debt within the meaning of the 39th section of the constitution. . . [37] the legislature . . may rightfully so apportion punishments according to the condition . . of those . . likely to offend, as to produce . . that . . practical equality in the administration of justice which it is the object of all free governments to accomplish." However [38] "by a law of the last session[2] . .

[1] Rev. St., ch. 3, sects. 86-89.
[2] Act of 1838.

[39] the defendant may discharge himself of the fine . . by remaining in prison twenty days, and complying with the provisions" "prescribed for the discharge of debtors in execution under the first and fourth sections of the fifty-eighth chapter of the Revised Statutes, entitled 'Insolvent Debtors,'" [Gaston, J.]

State v. Bennett, 4 Dev. and Bat. 43, December 1838. "The defendant was indicted together with three other persons . . 'riotously . . did break and enter [the dwelling house of one Benjamin Curry, a free man of color] . . and carry away . . five slaves' . . [44] he bought the land about twelve years before, about which time he also bought the negro woman Phillis, who was his wife and the mother of the other slaves; . . [45] Hunt, and . . Lindsay, had . . by means of usury and extortion, obtained from Curry evidences of debt . . secured by a deed of trust, fraudulently obtained, upon Curry's land and negroes; that Lindsay and Hunt caused the trustee to advertise the negroes for sale, and that Curry under great apprehensions that his wife and children would be sold and carried out of the State, applied to . . Bennett for assistance; . . Bennett came to a secret understanding with Lindsay; . . a few days before the sale . . Lindsay refused to stand to his agreement . . upon which Bennett informed Curry that he could not assist him . . whereupon Curry took the negroes and carried them to Greensborough, and applied to counsel to have a bill of injunction prepared against Lindsay and Hunt; that Lindsay and Hunt hearing of this, went to Bennett and agreed to take one hundred dollars less for their claims than had been before agreed upon, if he would . . prevent Curry from filing his bill, and induce him to return . . that Bennett . . by artful representations . . prevailed upon Curry to return with the negroes; . . just before the sale was to take place, Bennett procured Curry to execute the deeds [for the negroes and land] . . [46] with an understanding that . . if Curry should pay to Bennett in twelve months the balance he, Bennett, should have to pay on the claims of Hunt and Lindsay, then the negroes and all the other property should be re-conveyed to Curry, and in the mean time he, Curry, should retain possession; that Curry believed that all this was expressed in the deeds; . . Lindsay handed over to Bennett all the evidences of debt, and . . the deeds of trust, . . short time afterwards Bennett told Lindsay that Curry was determined to file a bill and expose all his usury and frauds, and moreover that Curry alleged that one of the notes was a forgery; that Lindsay . . agreed to compromise upon almost any terms, . . and took from him a bond for less than one fourth of . . the former to be paid when Bennett should sell the negroes. . . [48] The jury returned a verdict of guilty against all the defendants; . . adjudged . . that . . Bennett, should pay a fine of $100, and each of the other defendants . . $10. . . that . . Bennett, should be imprisoned for six calender [*sic*] months; the imprisonment to be remitted upon . . Bennett's surrendering to . . Curry the negroes and other personal property . . together with the . . evidences of debt . . and executing to . . Curry a reconveyance of the house and land, . . negroes

and other personal property . . further . . that a writ of restitution should issue to the Sheriff . . requiring him to place . . Curry in possession of the house and land"

Judgment reversed; [51] "and this opinion is to be certified to the Superior Court . . with directions to award sentence of fine or of fine and imprisonment" I. [50] "The conviction . . did not warrant a writ of restitution. . . [II.] it was irregular to annex to the sentence any condition for its subsequent remission." [Gaston, J.]

Pearson v. Taylor, 4 Dev. and Bat. 60, December 1838. Will: "to my eldest daughter . . one negro woman Dice . . the first born of Dice that is living hereafter to fall to Martha Tenneson,"

Caldwell v. Smith, 4 Dev. and Bat. 64, December 1838. [65] "the negro [a blacksmith] was hired out . . for the year 1833, . . in November . . [the agent of the owner] offered to sell the negro, . . The price fixed on was $525, . . about the 1st of January, 1834, the defendant took possession . . soon after February Court, 1834, the negro died,"

Held: the rule of *caveat emptor* applies.

Conner v. Satchwell, 4 Dev. and Bat. 72, December 1838. Will: "if my negro woman Suck should have another child, I give it to my daughter,"

M'Kesson v. M'Dowell, 4 Dev. and Bat. 120, December 1838. Allen's bond, dated February 11, 1827: "On the third day of November next I promise to pay . . one hundred and thirty five dollars for the hire of two negroes Gabriel and Alfred, which slaves I am to feed and clothe well, pay their taxes, and return them well clothed" Allen [121] "was at that time engaged in mining in the county;"

Taylor v. Brooks, 4 Dev. and Bat. 139, December 1838. "in 1836 . . the widow . . sold five negroes, being part of those descended from . . Amelia [in whom she had a life estate], to . . negro traders, . . who immediately after their purchase, and in the night time, run the negroes out of the State of Virginia,"

Popelston v. Skinner, 4 Dev. and Bat. 156, December 1838. Peggy and her child were sold at sheriff's sale, in 1837, for $500.

Bunting v. Ricks, 2 Dev. and Bat. Eq. 130, December 1838. "there was an interlocutory decree, that a certain slave should be sold . . made the sale on the 17th day of December, 1836, . . for $1106;"

Locke v. Armstrong, 2 Dev. and Bat. Eq. 147, December 1838. "He left a small estate which was exposed to sale by the administrators in November, 1781, . . The widow became the purchaser of the slave [a negro girl] at £85, 1*s*."

Lamb v. Trogden, 2 Dev. and Bat. Eq. 190, December 1838. In 1832 "Miles, valued at $300, was drawn by the complainants . . resided in Illinois, that the negro slave could not be carried into that state, . . desirous of disposing of all their interest . . 1833 . . Lamb, caused to be written a letter [postmarked 'Paris, Illinois'] . . to the defendant,

in which he stated that he was informed that Miles was in great distress to know what the plaintiff meant to do with him, that if he could get $300 . . for Miles, he would take it,"

Beverly v. Williams, 4 Dev. and Bat. 236, June 1839. "an action of trespass *vi et armis*, brought to recover damages . . for killing a slave of the plaintiff named Elias. . . some of the defendants shot a runaway slave found in the swamps . . [237] the other defendants were present and encouraged the act to be done. . . A witness . . saw the corpse . . the day after . . and he believed it was Elias, . . so much swollen, that he could not swear positively," Verdict and judgment for the plaintiff. Affirmed.

Buffalow v. Buffalow, 2 Dev. and Bat. Eq. 241, June 1839. Buffalow, [247] "of little mental capacity," [243] "told him that judgment had just been rendered against him for $100, as a penalty for trading with a negro: Immediately afterwards, a constable . . served two other warrants on him for the like penalties,"

Dicken v. Cotton, 2 Dev. and Bat. Eq. 272, June 1839. Will of Godwin Cotton: "I give . . unto [three persons] . . all my negroes, (except negro man Eli,) . . I . . bequeath unto my negro man Eli, his freedom, and three hundred dollars in money, to be left in the hands of my executors," [273] "Eli refuses the gift of freedom, because of the condition to leave the State, which the law [1] annexes to emancipation."
Held: Eli falls "into the residuum of the testator's estate;"

Tucker v. White, 2 Dev. and Bat. Eq. 289, June 1839. In 1820 four slaves were [290] "set up to sale . . in one lot, . . and . . purchased . . at the sum claimed . . as . . due . . which a little exceeded $500: . . about half their value, which was the object of selling all together, instead of each separately, as desired by persons who were present and wished to bid."

Chambers v. Hise, 2 Dev. and Bat. Eq. 305, June 1839. "The condition of this bill of sale [dated 1830] is such, that if . . Hise is not satisfied with the said negroes [Jane and her child], or, if the said negroes are not satisfied with . . Hise, then . . Chambers has privilege . . to redeem the . . negroes, at any time that he shall pay . . to . . Hise, the three hundred dollars, or a negro girl to the satisfaction of . . Hise."

Jones v. Green, 4 Dev. and Bat. 354, December 1839. "being about to send Jenny from Wayne county, . . to the county of Warren, . . as he had bound himself to do when he hired her, [he] told Lane [his brother-in-law], that if he would perform that service, he might have Rebecca," the two year old child of Jenny.

State v. Hoover, 4 Dev. and Bat. 365, December 1839. "The prisoner was put on trial . . [366] for the murder of his own female slave . . named Mira." [369] "through a period of four months, including the latter stages of pregnancy, delivery, and recent recovery therefrom, . .

[1] Act of 1830. Rev. St., ch. 111, sect. 58.

He beat her with clubs, iron chains, and other deadly weapons, time after time; burnt her; inflicted stripes over and often, with scourges, which literally excoriated her whole body; forced her out to work in inclement seasons, without being duly clad; provided for her insufficient food; exacted labour beyond her strength, and wantonly beat her because she could not comply with his requisitions. These enormities, besides others too disgusting to be particularly designated, the prisoner, without his heart once relenting, practised from the first of December until the latter end of . . March; and he did not relax even up to the last hours of his victim's existence." [1] [366] "A physician . . called to view the body . . stated that there were five wounds on the head . . four of which appeared to have been inflicted a week or more before her death; that the fifth was a fresh wound, about one and a half inches long, and to the bone, . . sufficient to have produced her death: . . many other wounds . . sufficient, independent of those on the head, to have caused death. The reasons assigned by the prisoner to those who witnessed his inhuman treatment . . were, at one time, that she stole his turnips and sold them to the worthless people in the neighborhood, and that she had attempted to burn his barn, and was disobedient and impudent to her mistress; at another, that she had attempted to burn his still house, and had put something in a pot to poison his family. There was no evidence except her own confessions, extorted by severe whippings, . . on the contrary, she seemed, as some of the witnesses testified, to do her best to obey . . His Honor charged the jury, 'that they must be satisfied . . that he intended to kill her, . . [367] convicted, . . and sentence of death pronounced,"

Judgment affirmed: [367] "With deep sorrow we have perused the statement of the case . . the acts imputed to this unhappy man do not belong to a state of civilization. . . there can scarcely be a savage of the wilderness so ferocious as not to shudder at the recital of them. . . [369] In such a case, surely, we do not speak of provocation; for nothing could palliate . . [370] Punishment thus immoderate . . loses all character of correction *in foro domestico*, and denotes plainly that the prisoner must have contemplated the fatal termination, which was the natural consequence of such barbarous cruelties. . . the party is justly answerable for all the harm he did, although he did not specially design the whole." [Ruffin, C. J.]

State v. Edney, 4 Dev. and Bat. 378, December 1839. [379] "the warrant on which the slave [George] was arrested . . charged him with 'being concerned in breaking into the smoke-house of . . Kincard, in the night time, and taking a quantity of pickled pork.'" [378] "The defendant acknowledged a recognizance before a Justice of the Peace . . in the sum of $100, to be void on condition" that George appeared at the next term. "The slave failed to appear,"

Norwood v. Marrow, 4 Dev. and Bat. 442, December 1839. [445] "Norwood had been . . involved in debt, . . it was the wish of both himself and his wife . . that the . . land . . should first be sold, in order, if possible, to save the negroes;"

[1] Ruffin, C. J.

Charles v. Elliott, 4 Dev. and Bat. 468, December 1839. "an action of *Detinue* . . [469] defendant and . . White were trustees of a Quaker society; and that the slave had been claimed by the defendant as the property of the society, under a deed given by . . Morris, which deed was void in law. The defendant . . February, 1839, . . sent the slave to White, to protect him from the attempts of the plaintiff [administrator of Morris] to take forcible possession. White sent the slave out of the State without the knowledge or consent of the defendant; but afterwards informed the defendant . . who made no objection" Judgment for the defendant, affirmed.

Joyner v. Vincent, 4 Dev. and Bat. 512, December 1839. "a deed . . for the negro . . Aggy, dated . . 1813. . . in consideration of . . $150 . . 'Provided . . [513] if . . [Robert] Johnson should . . pay unto . . Britton [Johnson] the above sum . . before his death, . . obligation to be void, only the increase, if any, to remain the property of Britton Johnson.' . . Aggy went into the possession of Britton . . and remained . . for about eighteen months or two years, when she had a child . . Jacob, and shortly afterwards ran away, leaving the child . . she went to the house of Robert . . Britton asked Robert why he did not send the girl home? To which he replied that the girl complained of Britton's wife; that she was a good girl whom he had raised and had never struck a blow; and he disliked to force her back. Britton said he had one little child now to raise by hand; if Robert kept the woman and left him all the children to raise which she might have, it would be very hard on him, as he was to have no interest for the $150, but the use of Aggy instead; . . Robert replied that . . in order that he might not complain of having to raise the little negroes, if Britton would consent to let Aggy remain with him, he would himself raise . . all the children . . for Britton,"

Watson v. Ogburn, 2 Dev. and Bat. Eq. 353, December 1839. [354] "The bill . . stated, that . . the negro woman and [five] children yielded no profits, but were expensive to maintain; and that the negro woman was disobedient and dishonest; and that for these reasons, the plaintiff, . . April, 1836, when slaves were at their maximum price, sold . . Fan and her five children to . . Dodd, for . . $2000, which he charged to have been a very full, if not extravagant, price."

Munnerlin v. Birmingham, 2 Dev. and Bat. Eq. 358, December 1839. In December 1822, a negro girl, seventeen years old, sold for $400.

Tally v. Tally, 2 Dev. and Bat. Eq. 385, December 1839. "a sister . . [386] an idiot . . in 1818, . . became entitled to three slaves, . . in 1838 . . her negroes had increased to thirteen . . her maintenance and that of her slaves had exhausted the [$500] . . and also the profits of the slaves, and that there remained . . balance due to the plaintiff [in 1837] . . $2,205: 19 cents."

Ralston v. Telfair, 2 Dev. and Bat. Eq. 414, December 1839. The will of Samuel Ralston, who died in 1829, [415] "directed four of his

slaves to be emancipated; and that another . . should be sold to discharge a note then outstanding, which was given for the price of the said slave;" Ralston's father, not mentioned in the will, [416] "instituted a suit . . for the purpose of having the probate . . recalled; . . so ordered"

Held: [421] "the defendants are [not] chargeable with hires for the negroes which the will directed to be emancipated; from whom the defendants made no profits, as they were allowed to work for themselves . . from a regard to the supposed wishes of their testator;"

Pickard v. Brewer, 2 Dev. and Bat. Eq. 428, December 1839. One of the remaindermen "living in Tennessee, . . conveyed all her part of the . . slaves to . . Pickard, who resided in Louisiana. . . in 1828, after the sale . . the defendant [the tenant for life, who had purchased the interests of the other remaindermen] sold, in absolute property, all the said negroes to slave traders, who carried them out of the State;"

State v. Jarrott (*a slave*), 1 Iredell 76, June 1840. [77] "The prisoner . . was indicted . . for the murder of . . Chatham, a white man. . . Brooks, a white boy, about fourteen . . stated that he went with the deceased, who was eighteen or nineteen years old, to a fish-trap . . where several slaves were collected, on Saturday night; . . the only white persons present; . . they remained there until about two or three hours before day, when Chatham was killed; that the prisoner and . . Hughes, a free negro, played cards, and differed about the game, when they called on the deceased to keep the game for them, . . a second difference took place . . and Hughes refused to play longer; that the prisoner had a twelve and a half cent piece of coin, upon a handkerchief, on which they had been playing—which fell among the leaves, when he jerked up the handkerchief; that the prisoner . . not finding it, said that he saw his nine pence walk into a white man's pocket, and that any white man who would steal a negro's money, was not too good to unbutton a sheep's collar; . . further said that the deceased was raised and had lived on stolen sheep; . . if he did not give it up, he would kill him—and brandished a stick over the head of the deceased; . . [78] deceased requested the prisoner to search him; which the latter refused to do; . . deceased then turned out his pockets, and the prisoner then cursed him, and told him that he had the money in his shoes; . . deceased took off his shoes and stockings; that shortly afterwards, some of the company . . found the piece of money in the leaves, . . the prisoner continued to abuse him . . deceased . . told the prisoner that if he did not hush, he . . would stick his knife in him; upon which the prisoner drew his stick ['about three feet long, made of curled hickory, about the size of a common walking cane, larger at the butt end, and with a string attached to the small end, to fasten around the prisoner's wrist'], and told the deceased to do it if he dared; . . continued to use insulting language to the deceased, who took up a piece of fence rail . . and, having the knife still in his hand, . . ran him twice around the fire, and then ran him off, . . the prisoner soon after returned . . and said something . . upon which the deceased took up the piece of rail, and having

the knife still open . . went towards the prisoner; . . witness then heard two blows, and, upon going to the place, found the deceased on the ground. . . A negro slave . . Isaac, was then called as a witness for the State; and concurred in most points, . . [79] but . . did not see [the prisoner] . . shake [his stick] . . over the deceased's head. . . that after the money was found, the quarrel ceased for . . perhaps fifteen minutes—when the deceased renewed the quarrel, and swore he would kill the prisoner, and made at him, . . saw the prisoner strike him four or five blows with the stick . . Jones, a free negro, . . concurred with Isaac . . The deceased was . . not tall, but stoutly built. The prisoner was about six feet high, and of the ordinary size of negroes of that height; . . about twenty-three years of age. . . [80] Jones, stated also, that when the deceased renewed the quarrel, . . he swore he would kill the prisoner that night; that if he did not, he would go to his master on Monday morning, and have him whipped to his satisfaction; and he would then waylay him and shoot him with a rifle. . . The prisoner's counsel asked the court to instruct the jury, . . '4thly, That the deceased had no right to correct the prisoner, with the piece of rail or the knife, for insolent language; but ought to have applied to his master, or to a justice of the peace, for redress.' . . [81] The court refused . . The jury found the prisoner guilty of murder. A motion for a new trial . . overruled, and sentence of death pronounced,"

Judgment reversed, and a *venire de novo* awarded: [83] "insolence of a slave does not justify an excessive battery; . . [86] although his passions ought to be tamed down so as to suit his condition, the law would be *savage*, if it made no allowance for passion. . . That is a legal provocation of which it can be pronounced, having due regard to the relative condition of the white man and the slave, and the obligation of the latter to conform his instinct and his passions to his condition of inferiority, that it would provoke well disposed slaves into a violent passion." [Gaston, J.]

Campbell v. Street, 1 Iredell 109, June 1840.[1] "an action of trespass *vi et armis* for false imprisonment . . will of John Campbell . . of . . Virginia; . . 'My will . . is, that my negro woman Pender should have her freedom immediately, and her emancipation recorded. . . that all the rest of my black people should serve until my youngest child should be . . twenty-one, for the use of raising my children and young negroes. After my youngest child be of age, my will is that all my negroes should have their freedom and liberty.' . . among the slaves . . was her mother . . she, the plaintiff, was born after the testator's death, but before his youngest child, John Campbell, attained . . twenty-one . . in . . 1815 or 1816; . . until 1833, she had passed as a free woman in Virginia; that she was then taken by the said John Campbell, Junior, and sold to . . a co-partner in negro trading with the defendant. . . the defendant had held . . her as a slave ever since she was brought to Person county. . . produced a statute of . . Virginia, enacted in

[1] Note by the reporter: "This case was decided several terms ago, but was overlooked by the Reporters."

. . 1782, allowing masters to liberate their slaves by deed or will. . . verdict . . for the plaintiff, and . . judgment upon the verdict," Affirmed.

Williamson v. Canady, 1 Iredell 113, June 1840. "a co-partnership . . for the purpose of buying and selling negroes; . . agreed that each member of the firm should advance . . five thousand dollars by a certain time;"

State v. Plunket, 1 Iredell 115, June 1840. "The defendant [a licensed retailer of spirituous liquors] was convicted . . on an indictment, charging that he . . sold spirituous liquors to a slave"

Hardin v. Borders, 1 Iredell 143, June 1840. "the plaintiff was arrested . . under a State's Warrant, which charged him with . . stealing a negro man . . two justices . . adjudged the plaintiff to be guilty"

Newsome v. Roles, 1 Iredell 179, June 1840. Roles's agent [180] "was . . directed . . that if he had to sell these negroes, as they were favorite slaves, . . he [the agent] should reserve a right to Roles, to redeem or re-purchase them."

Holt v. Kernodle, 1 Iredell 199, June 1840. [200] "they were the proprietors of a blacksmith shop, in which they had two slaves engaged; and . . 1836, they employed a blacksmith . . to work in the shop with the slaves,"

Stone v. Hinton, 1 Ired. Eq. 15, June 1840. Will, dated 1834, of Mrs. Sarah Stone, who died in 1838: "I consider the most benevolent plan that I can pursue toward my negroes, will be the following: I desire that they shall all be sold in families; that husband and wife, where I own both, and their small children, shall be put up together. They shall not be sold to speculators, but to persons for their own use. . . Happy, Penelope's daughter, I leave to my sister during her life, and to be sold at her death, or to be made free, if her conduct shall merit such a distinction, in the opinion of my sister."

White v. Green, 1 Ired. Eq. 45, June 1840. "Arthur Green died some time in . . 1830, leaving a will . . [46] 'It is my wish . . that my trusty negroes, Ben and Nancy, for their long, faithful and meritorious services, should, at the death of my wife, be liberated and freed of their bondage, and that I desire my friend Henry Garret to attend to the same, and see that they be so liberated and freed. . . that . . Ben and Nancy, should, at the death of my wife, have a part of the tract of land, . . also . . one cow and calf, one sow and pigs, and a certain bay mare called Jin, to them and their heirs forever." [49] "The will was made before the passage of the act of 1830." [1]

Held: "the will, as to those matters, is inoperative;"

Boon v. Rea, 1 Ired. Eq. 71, June 1840. Leak's will: "It is my will that all the remainder of my negroes not given away, to be sold—those not above the ages of ten years to be sold with their mothers,"

[1] Rev. St., ch. 111, sect. 57.

Harriss v. Mabry, 1 Iredell 240, December 1840. "an action . . for carrying a slave out of the State. . . the defendant and others were owners . . of the Piedmont line of stages from . . South Carolina . . to Prince Edward Court House, in Virginia; from which . . there was another line of stages to Baltimore. . . December, 1838, a mulatto girl got into the stage at Mrs. Smith's, . . The girl paid her passage to Salisbury . . had a pass, signed by Mrs. Smith, permitting her to go to Salisbury; . . Morris [the driver] carried the girl openly . . [241] to Salisbury. She then paid her passage . . for Greensboro'. . . continued on in the Greensborough stage. Mr. Harris stated that . . the mulatto girl, the property of the plaintiff [[240] 'who lived within a few miles of Mrs. Smith's'], left the plaintiff's house without her permission, and . . he pursued on in the next stage, and heard of her along the route, until he arrived in Baltimore, . . at which place he had her apprehended, and brought her back. At several places on the route, he called at the stage offices, and saw an entry on the way-bill, 'Mary Harris, a yellow girl.' . . the plaintiff's girl was absent from her service about three weeks; that he had kept an account of his expenses . . including that of the girl on her return, and the amount was $214, exclusive of his own services. . . [242] verdict for the plaintiff. Damages $235." Judgment for the plaintiff affirmed.

Bonner v. Latham, 1 Iredell 271, December 1840. In 1840, a jury [273] "found the value of the negro Toby to be one thousand dollars,"

Smithwick v. Biggs, 1 Iredell 281, December 1840. Will, dated 1824: "I wish for the negroes lent to my wife, if they do not behave, to be hired out. I also wish for all the negroes not given to be hired out as soon as they will bring any thing."

Shirley v. Whitehead, 1 Ired. Eq. 130, December 1840. [131] "he had no white person dwelling with him, and stood in need of better nursing and more assiduous attentions than he could expect from his slaves;"

Griffin v. Pleasant, 1 Ired. Eq. 152, December 1840. [161] "the mother of Wesley died soon after giving birth to the infant; that the elder Mr. Pleasant offered the infant to any of his children who would undertake to rear it; . . they all declined . . except . . the wife of . . Griffin." [155] "after the death of their father, the boy Wesley ran away; that they found him in the employment of . . Warren; took him home,"

McDonald v. McLeod, 1 Ired. Eq. 221, December 1840. [225] "the negro was as likely as any of his age [twenty-two years] in the neighborhood, . . the witness would have given $500 for him, but he does not know that he would have sold for that sum, where not personally known,"

Lewis v. Owen, 1 Ired. Eq. 290, December 1840. [296] "in 1829 there was a depression in the price of slaves, and that $400 was the usual price of prime men; . . that $400 was the full value, if not more than the full value, of Jupiter [who was about 17 years old]; . . In

November, 1836 [when there was [295] 'a sudden and very great rise in the price of slaves'], Jupiter would have sold for $1,000." In 1834 the defendant "removed him, and a large number of other slaves, to a plantation in Mississippi, on which he remained until the winter of 1836, when the defendant sold the plantation and negroes;"

Wade v. Dick, 1 Ired. Eq. 313, December 1840. [319] "in December 1801, . . Williamson obtained a judgment . . that a *fi. fa.* issued thereon and was levied on certain negroes and other personal property; . . the sheriff . . sold . . negro woman Mary for £5. 1. 6., negro boy, Anthony, for £58. 0. 6., and negro woman Rhoda and child [Jane] for £185. 0. 6.," to Gwinn. Gwinn gave Jane to his daughter. In August 1822, Rhoda and her two children, Hannah and Esther, were sold at auction [316] "for $631 50 cts., which they aver to be . . a very high price, . . [to] Williamson, who alleged as a reason for giving such high prices, that he owned Joe, one of Rhoda's children, and had a favorable opinion of the family." In 1823 Will and Ben were sold [317] "at the price of $1,112 50 cents;"

State v. Fore and Chestnut, 1 Iredell 378, June 1841. [379] "the defendants had, continuously for a year . . co-habited together as man and wife, and had one child . . Joel [Fore] was a free person of color, and . . Susan [Chestnut] was a white woman. . . offered in evidence a licence from the Clerk of the County Court, authorizing the marriage of the defendants, bearing a date subsequent to the act of Assembly passed during the session of eighteen hundred and thirty eight—nine,[1] declaring marriages between free persons of color and white persons null and void; and . . offered to prove that the marriage was duly solemnized in . . 1840, prior to the co-habitation. The court rejected this testimony, and the defendants were convicted.[2] . . judgment pronounced for the State." Affirmed.

Matthis v. Rhea, 1 Iredell 394, June 1841. Will, dated 1834: "She is not allowed to sell . . said effects, . . with the exception of a negro boy child"

Woolard v. McCullough, 1 Iredell 432, June 1841. "overseer of a road . . had duly summoned the defendant to work on said road . . for himself and his two hands, in . . 1838; that defendant had sent two of his slaves to work on said road, one day during that year."[3]

Cobb v. Fogalman, 1 Iredell 440, June 1841. [441] "The fraud complained of, was alleged to have been committed in the sale of a female slave Sally, who, at the time of the sale, labored under cancer or other disease of the womb, . . The plaintiff produced a bill of sale . . for the said slave, and her daughter Hannah, about four years old, . . 1838, containing a warranty of title, but not of soundness, . . Sally, while in possession of the defendant, had borne, after . . Hannah, two children, . . dead, or survived but a short time; that at the time of sale, she was

[1] Act of 1838, ch. 24.
[2] Under the act against fornication and adultery. Rev. St., ch. 34, sect. 46.
[3] *Ibid.*, ch. 104, sect. 10.

advanced in pregnancy about six months; that on several occasions, soon after the purchase . . she was attacked with faintness when working in the harvest field . . and in August . . was taken in labor, when, after . . about thirty-six hours, a physician was called in, who performed the Caesarean operation, delivered her of a child, which he testified was then recently dead, and that the mother died about five or six days thereafter. He also testified . . neck of womb diseased with cancer . . and that, in his opinion, the disease had existed for several years; . . the slave had attacks of faintness, while in the defendant's possession; that defendant . . said they occurred while she was pregnant; . . had no other female slave, except a girl about 14 years old. The defendant offered evidence to shew that he had owned . . Hannah about four years; that she was a stout, vigorous looking woman, [442] and, during all the time he owned her, performed service as a cook and washerwoman for his family, or as a field hand; and was on no occasion prevented from service by sickness, except by an attack of measles, and during her confinement . . that the plaintiff, about a month before the sale . . bought . . the husband of Sally, and who had been her husband all the time that the defendant owned her; that the plaintiff owned no other slave, except a small boy; . . said, the reason why he wished to purchase her was, that he owned the husband, and that his daughters did not like to wash for the negro man;" Verdict for the plaintiff. Judgment for the plaintiff, reversed and a new trial awarded.

Redman v. Roberts, 1 Iredell 479, June 1841. "the plaintiff alleged that the defendant had sold spirituous liquors to his slave,[1] and that he had drunk to such excess as to occasion his death, and claimed from the defendant between three and four hundred dollars as the amount of damages he had sustained. . . the parties compromised, by the defendant giving two bonds for one hundred dollars each,"

Newlin v. Freeman, 1 Iredell 514, June 1841. [516] "Sarah Freeman could not read English, . . was a German woman, and could read German . . was 65 or 70 years of age . . had declared, before making her will and afterwards, that, when she was dead, her negroes should be free, and serve no one. . . Newlin [[514] 'who propounded the paper writing, as the last will . . of Sarah Freeman'] was a member of the Quaker Society. Mrs. Freeman had always said that it was the intention of her former husband and herself to set the negroes free, and send them to a free state or country—that she could not do that, and she intended to give them to some steady old Quaker, who would not own slaves, . . [517] The jury found . . that the paper writing was the last will . . [518] admitted to probate . . [519] disposing of the personal estate" See Thompson *v.* Newlin, pp. 110, 141, 163, *infra.*

Cole v. Robinson, 1 Iredell 541, June 1841. [542] "Foxhall . . bequeathed Fan, and her increase to his daughter Joanna . . for life, . . Foxhall died in 1792, . . 1803 [two of Joanna's children] . . sold . . Fan to Robinson, . . that after the said sale Fan had issue, the negroes

[1] *Ibid.*, ch. 34, sect. 75.

Tamar and Daphne, . . in 1829, Robinson sold Tamar and Daphne to a negro trader, who immediately removed them out of the State and to parts unknown;"

Ragland v. Huntingdon, 1 Iredell 561, June 1841. [562] "the testator was a free man of color, that Hannah Ragland, his widow, . . one of the plaintiffs [and a legatee], was a free woman of color, . . Rachel Ann Arey [the other plaintiff and legatee] was of pure white blood," "both of the defendants were free persons of color; . . his Honor rejected the testimony [of two witnesses, persons of color, 'offered by the caveators . . to prove admissions of Hannah']."

Held: [564] "they were competent . . [565] to give evidence of *her* [Mrs. Ragland's] admissions and declarations. It comes within the exception in the statute;[1] and the circumstance that Arey . . might be incidentally affected . . was not sufficient to exclude them."

Threadgill v. Ingram, 1 Iredell 577, June 1841. In the spring of 1841, a male slave sued for, was valued, by agreement, at $700.

Jones v. Jones, 1 Ired. Eq. 332, June 1841. "in September, 1836, . . formed a co-partnership to purchase and sell slaves on speculation . . Hardy Jones was to advance . . $3350, and the defendant one third part as much, as capital; and the defendant was to invest the same and carry the slaves to the south-west for sale, pay all expenses out of his own pocket, and divide the profits equally . . [333] sold them in Alabama, . . The answer . . states that the expenses were $501, 65 cts. . . [334] The master finds . . that the profits amounted to $2800, after deducting all expenses,"

Parker v. Hinson, 1 Ired. Eq. 381, June 1841. [384] "has heard the plaintiff's mother speak of the little negroes she had, as being raised by her for the benefit of her son; that on one occasion, when a negro child was born, she told him to go and look at his little negro; that on one occasion, . . [385] the plaintiff whipped some of them, and she said she had a good mind to send them home to him, as she was unfit to raise them;"

Bethune v. Terry, 1 Ired. Eq. 397, June 1841. [399] "The defendant avers that soon afterwards [1834], the value of negroes began to rise . . and continued to do so during . . 1835 and 1836;"

Cameron v. Commissioners, 1 Ired. Eq. 436, June 1841. [437] "The late John Rex . . bequeathed unto . . Cameron and . . Mordecai . . all his slaves, in trust to cause the said slaves, as soon after the testator's death as practicable, to be removed to Africa, and there settled in some colony, under the patronage and control of the American Colonization Society; with a proviso, that in case any . . should refuse to be so removed, the slave so refusing should be sold and the money . . added to the fund created for the removal and support of such . . as should be removed to Africa with their consent. . . 'It is my will . . that the lands . . tan yard . . all my crop, stock of every kind, plantation tools

[1] Rev. St., ch. 31, sect. 81.

and carriages, implements for tanning and currying, household and kitchen furniture,' . . be sold . . and the proceeds . . shall constitute a fund to defray the expenses incidental to the removal . . and for the establishment of said slaves in such colony' . . [438] the executors . . caused all the said slaves, with the exception of . . Winney, who would not consent to leave the state, to be removed to . . Liberia . . where they are now residing as free persons."

Held: [440] "the whole of the fund appropriated to the removal and settlement of these negroes is given for the beneficial use of the removed negroes, . . as their property, . . in the act of 1830, ch. 9, . . it is the declared policy of this State to . . encourage their emancipation, so that they be but removed . . [441] without the State. As a fund, therefore, devoted to a charitable purpose, not inconsistent but in accordance with public policy . . we see no valid objections to the appropriation." [Gaston, J.]

Webb v. Griffith, 1 Ired. Eq. 446, June 1841. [449] "in January 1833, the negro girl . . and her infant children, were sold . . for . . five hundred dollars; . . October, 1834, . . he sold the negro boy Rufus[1] . . for . . $400; . . and moved off with three negroes . . to Tennessee;"

Wardens v. Cope, 2 Iredell 44, December 1841. "Bumgarner . . sued as well for himself as the Wardens of the Poor of said County, in a plea of debt for one hundred dollars, due by penalty under the act of 1826,[2] for trading with David, the slave of . . Love."

McNamara v. Kerns, 2 Iredell 66, December 1841. "an action of Trespass . . to recover the value of nine hogs . . taken by the defendants. . . the plaintiff was a farmer, and had several negroes . . who were permitted to raise hogs for themselves. The negroes had the hogs in pens, within sight of the dwelling house of the plaintiff, and the plaintiff said that they were the negroes' hogs, that what was theirs was his, and . . forbade their being taken . . a warrant, signed by five . . [67] Wardens of the Poor . . placed in the hands of the defendant, Daniel Kerns, one of the constables . . Whereas by . . information of John Kerns, planter, to the Wardens of the Poor . . that the slaves of . . McNamara, and also the slaves of . . Torrence, do, against the Statute,[3] . . raise, keep, and mark hogs as their own . . property: These are therefore to command you . . to . . seize upon the property of hogs owned by said negroes, and bring them to the Wardens of the Poor. . . to be disposed of according to Act. . . Given under our hands . . November, 1840." Verdict and judgment for the defendants. Judgment affirmed.

Buie v. Buie, 2 Iredell 87, December 1841. [88] "for the last six or eight years the defendant, with the assistance of her sons and the negro boy, made fine crops for sale,"

[1] A negro man. 1 Ired. Eq. 446.
[2] Rev. St., ch. 34, sect. 75.
[3] *Ibid.*, ch. 89, sect. 24.

Jacocks v. Mullen, 2 Iredell 162, December 1841. In 1835 Aaron was sold [164] "because of his misconduct, for . . $375;"

State v. McGowen, 2 Ired. Eq. 9, December 1841. Dickson's will, dated 1813: [10] "old Lucy and her daughter Lucy, and her son Frank and her increase hereafter to be sold in one lot and not separated, also Kit, and her three youngest children that she may have at the time of my decease to be sold in one lot and not separated. Old Tarisman is to be well treated by my executors and not let him want for any thing. The negroes not herein named are to be sold separate to the highest bidder. The remaining part of my estate . . [11] sold in the same way . . the nett proceeds . . to the use of a free school or schools for . . the poor of Duplin County."

Little v. Marsh, 2 Ired. Eq. 18, December 1841. "the sheriff . . levied the . . executions on . . Clarissa and her five children, . . and . . did, . . September, 1838, sell said negroes at the court house door . . for . . one thousand four hundred and fifty-five dollars. . . [21] The defendant . . stated . . [22] that it was understood among the said slaves, . . that . . Ashcraft [to whom he had sent Clarissa after Ashcraft's marriage to defendant's daughter] was going to convey off to Mississippi all his own negroes, . . and, it was believed, that . . he would also run off privately with them, Clarissa and her children," Consequently they [23] "ran away of their own accord and came to the defendant's house, where they remained till seized by the Sheriff" Daniel, J.: [27] "the answer of the defendant appears . . [28] to want frankness,"

Atkins v. Kron, 2 Ired. Eq. 58, December 1841. Will of Delamothe, "a native of France," dated 1838: [60] "his executors shall hire out his slaves, except one family, . . David and his wife and their daughter Charity and her four children; . . directs that they shall be put in possession of a certain piece of land, and 'there live together, provided that David and all his family support themselves, . . and in order that he may be able to accomplish this task, I desire that he should enjoy the product of that farm, with the labor of himself, his wife and daughter Charity and Charity's children, until the children attain the age of 21; and then that Charity's children be returned into the common stock, as every one of them attains . . 21.' The will then gives David and his wife . . some provisions, a horse, some farming stock and utensils, and directs that they shall 'remain in possession of that land during their natural life, free from all incumbrances.'"

Held: [66] "he did not intend their emancipation,"

Freeman v. Knight, 2 Ired. Eq. 72, December 1841. [74] "The testator bequeaths . . to his son-in-law . . Bridges, and his daughter . . for life . . a girl Franky—who at the time of making the will, had an infant child. . . Franky had been put into the possession of Bridges . . some time before the birth of this child,"

Held: [75] "in regard to this negro child there is a partial intestacy, and it is to be disposed of under our statute of distributions."

Gunn v. McAden, 2 Ired. Eq. 79, December 1841. [80] "In the latter part of . . 1835, the plaintiff and the defendant jointly purchased from one Lewis a number of slaves, at . . $32,000; . . Early in 1836, a sale was made of the same negroes to persons in Mississippi, for . . $50,000; whereof 15,000, was to be paid at a short day, and for the residue the purchasers were to give their bonds at one and two years. . . but before the cash payment . . the defendant made a new contract . . by which the price was to be $60,000, on a credit of one, two, and three years;"

M'Laurin v. Wright, 2 Ired. Eq. 94, December 1841. The female slave Edy, sixteen years old, [99] "in the opinion of one of the witnesses, was worth $350 [on February 16, 1836], and in that of the other three, $400 . . There can be no positive correctness in setting a value on a slave. One man will give or take fifty or one hundred dollars more or less in the purchase of one than another man will." [Ruffin, C. J.]

Dailey v. Dismal Swamp Canal Co., 2 Iredell 222, June 1842. "an action . . to recover damages for the negligence of the defendants' agents, in consequence of which a canal boat belonging to the plaintiff was sunk, and his negro Aaron drowned. . . he hired the negro . . from . . Watson . . at $65 for the year. . . [223] a part of the contract that the negro should not be sent by nor employed on the canal of the defendants, except at the risk of the plaintiff. . . the owner . . recovered of the plaintiff only $75." Verdict for the plaintiff for "the value of the negroe's services [not only] for the residue of the year for which he was hired, but also the $75,"

Adams v. Hayes, 2 Iredell 361, June 1842. [363] "the defendant procured two men to go to South Carolina and take the negroes [whom he had loaned or given to his daughter] from the possession of the plaintiff [his son-in-law] in the night time and bring them to him"

Blackledge v. Clark, 2 Iredell 394, June 1842. "five negro slaves [owned by Brown] . . had been levied on [in 1830] . . ran away from a tanyard, where they were employed . . and could not be taken, so as to be sold by the deputy marshal in Newbern . . [395] where they feared they would be purchased by speculators." Brown testified that [394] "he contrived to have an interview with the slaves about nine o'clock at night [April 4] at the wharf in Newbern, and prevailed upon them to accompany him to the town of Washington . . [395] delivered them [April 6] to Mr. Demilt, the deputy Marshal [who had been [396] 'requested . . to advertise Mr. Brown's slaves for sale in Washington, and on the 27th of March, 1830, he did . . to be sold on the 6th day of the following month'] . . the latter sold them at public auction, at the door of the Court-House, . . the same day . . there were four or five persons present . . one of whom . . bid them off for . . the plaintiff [Brown's brother-in-law] . . at . . $210" Brown [394] "does not recollect the price at which slaves sold in 1830, but that some

time after . . four of the slaves would have sold for $1,200 each, and the fifth for 1,500 or 1,600 dollars—and that the four first would hire for $120 each per annum, and the other for $400 per annum. . . [396] no money was paid for them . . [397] Wiswall swore that he lived in Washington in 1830, and was . . engaged in the purchase of negroes, but he never . . heard of the sale . . until after it was over." [400] "Brown supplied the money to defray the expenses . . and . . also took . . the negroes back to their old employment in the tan-yard,"

Held: [399] "The transactions . . are . . palpably dishonest on the part of Brown"

Baum v. Stevens, 2 Iredell 411, June 1842. "the defendant sold a number of negroes at public auction, . . declared, when the negro prior to Jim was offered, that he did not warrant that negro, as he was unsound—that when Jim was offered, he remarked 'here is a young, likely, healthy negro; what is bid for him?' whereupon the plantiff bid . . $480, and Jim was stricken off to him" Jim was unsound.

Lee v. Gause, 2 Iredell 440, June 1842. "Received, August 23d, 1833, . . five hundred dollars, . . for a certain negro fellow"

Cannon v. Peebles, 2 Iredell 449, June 1842. [451] "Spruill . . was engaged in fulfilling a contract for work . . on the . . Rail Road, which was to be continued throughout . . 1841, and had employed eleven of his negro slaves . . and that of the remaining sixteen slaves, all (except the children who were unable to labor and three servants . . in attendance on . . Spruill's family) were occupied in making a crop"

Willis v. Butler, 2 Ired. Eq. 145, June 1842. The Brindletown Gold Mine "was one called a surface mine, that Butler had under him a prime set of hands, that he worked them hard, on land unoperated on before, and he rendered an average account of but two pennyweights of gold to the hand per day—that his successor . . [146] the next year, with an inferior set of hands, . . having but little fresh mining land, made from four to five . . Butler in his answer . . denies . . that the mining land . . was in its primitive state . . but . . it had been operated on, . . before he took possession [1829], by one hundred and fifty or two hundred hands."

Abernathy v. Hoke, 2 Ired. Eq. 157, June 1842. In April 1827 [164] "Sue had nine children, of which five were sold separately, and of those Hoke bought two, and that the other four were sold with their mother [to Hoke] on account of their ages[1] at $632. . . these negroes sold remarkably high for their ages and appearance." Hoke left Sue and her younger children with Abernathy, their former owner, till 1831, [160] "inasmuch as he had no immediate use for them, and their services were about equal to their tax, victuals and clothing. . . [163] a negro by the name of Mingo, who was the husband of the woman, was purchased for one Dogharty, and that the winter after, or . . the next

[1] [161] "too small to separate from the mother."

. . Hoke applied . . to purchase him. . . that his reason for not buying Mingo [at the sale] was, that he went too high. . . subsequently Hoke did buy Mingo."

Averitt v. Foy, 2 Ired. Eq. 221, June 1842. [225] "The defendant said that he was giving medicine to the negro; that he thought he would be able to cure him, and make the slave useful as a cooper . . This witness states, that he believes that the negro was diseased when the plaintiff hired him; that he, as patroller, had several times visited the slaves . . and this slave was unwell and complaining. On his last visit . . the legs of the slave were swelled."

Crawford v. Shaver, 2 Ired. Eq. 238, June 1842. Will: [239] "My will . . is, that the negroes . . shall be hired out in the county . . and not without the county,"

Bradley v. Jones, 2 Ired. Eq. 245, June 1842. Will: "I give unto my son Willie Jones' children one sixth share in my negro Mary and all of her children." Mary had a grandchild.

Held: [248] "the grand-child did not pass to said legatees. . . is therefore to be sold under the residuary clause,"

Lee v. McKay, 3 Iredell 29, December 1842. "the operation of sawing and all other labor about the mill were performed by slaves."

State v. Tomlinson, 3 Iredell 32, December 1842. [33] "The defendant was indicted and tried for trading with a slave, an offence embraced in ch. 34, sec. 75, Rev. Stat."

Green v. Harris, 3 Iredell 210, December 1842. About 1798 "his father . . called Matilda and said to her, 'Go over to Bob Green's and nurse for my daughter'—that Matilda . . went to the plaintiff's and continued in his possession" till 1840. [212] "Matilda when she first went . . was a very small girl" About 1832 Hogan hired two of Matilda's children, "Lucy . . [and] Richmond and an infant child of Lucy for one year, for $12" Another witness stated, [213] "that on the birth of one of Matilda's children, he observed to the plaintiff that Matilda would make him rich,"

Mayho v. Sears, 3 Iredell 224, December 1842. Action of trespass *vi et armis*. "On the 23d of July, 1805, John Moring, then a citizen of . . Virginia, . . executed a deed of manumission . . duly acknowledged in the court . . and . . recorded . . 'Know ye, that I . . do by these presents emancipate . . a certain parcel of negroes as they come of age and time hereafter to be mentioned, Hannah, Patrick, Cherry, Jordan and Charlotte, to be free without day. Isabel to be free the first day of November, one thousand eight hundred and seven; Carter to be free the sixteenth day of August, one thousand eight hundred and twelve; Polly to be free the first day of April, one thousand eight hundred and fourteen; Burwell . . [225] the tenth day of April, one thousand eight hundred and twenty-two; Maria . . the twenty-fifth day of December, one thousand eight hundred and twenty-two; Willis . . the

eleventh day of April, one thousand eight hundred and twenty-four.' . . After the execution . . Moring removed into North Carolina, . . bringing . . Polly . . She, before the first day of April, 1814, had . . a daughter, and that daughter about . . 1830, had issue the plaintiff. After the first day of April, 1814, . . Polly, being on that day of full age, lived by herself and with her children, and acted in every respect as a free woman, and she and her daughter and the plaintiff were recognized in the neighborhood as free persons of color, and as such . . by . . Moring, . . until . . 1838, when he sold . . the plaintiff to the defendant,"

Judgment for the defendant, affirmed: [232] "the plaintiff's mother was born a slave, and so, consequently, was he."

Canaday v. Nuttall, 2 Ired. Eq. 265, December 1842. [266] "The bill . . states, . . that James Nuttall ran off the negroes,"

Whitehurst v. Harker, 2 Ired. Eq. 292, December 1842. Held: slaves are "moveable property."

Latham v. Wiswall, 2 Ired. Eq. 294, December 1842. The court made an order [295] "that all the property of the . . lunatic, except two chargeable female slaves, . . be sold"

Foscue v. Foscue, 2 Ired. Eq. 321, December 1842. In 1805 Foscue "executed a deed, whereby he conveyed to his daughter . . then an infant and lunatic, and residing with him, four slaves . . at his death,"

Hester v. Hester, 2 Ired. Eq. 330, December 1842. Will of Benjamin Hester, admitted to probate in 1838: [331] "to my wife twelve negroes, at her death to do with . . as she may think proper, six males and six females, out of Harman and Amie's family, and if my wife should think at any time that the property is burdensome to her, she can . . sell any part she may choose, . . [332] that my old man Shadrach be set free."

Roberts v. Green, 2 Ired. Eq. 346, December 1842. Will: "My two negroes . . I . . bequeath to my great-grand-daughter, . . But . . that the two . . be hired out during the natural life of my grandson . . and their wages paid to him"

Long v. Norcum, 2 Ired. Eq. 354, December 1842. [355] "the negro woman . . after becoming grown, had children, and by reason thereof no hires could be got for her . . but that she and her family became chargeable, and in 1836 . . $27, and in 1837 . . $48 were paid for keeping them." In 1829 the mother was [359] "worth probably $300," In 1838 the administrator sold her and her four children for $1487.50.

Snider v. Lackenour, 2 Ired. Eq. 360, December 1842. Will: "My negro woman Betty and her child David, I give unto my heirs . . conditioned that the . . negroes are not to be sold out of their families, . . not to misuse said negroes while they behave well, neither to hire them to any other person against any of my heirs will;"

Green v. Thompson, 2 Ired. Eq. 367, December 1842. In 1838 Edwards [366] "sold unto the defendant . . ten negroes . . two of whom

were women and the others their children, . . and . . the defendant covenanted . . to maintain . . Edwards . . during his life, . . that, if . . Edwards should prefer to reside with some other person, then he was to have the privilege to take the said negroes . . during his life, all of which, at his death, were to return to the said defendant . . the expense of maintaining the negroes was equivalent to the value of their services.— He retained . . [367] a negro man and negro woman worth together $900, . . After the quarrel, he demanded his negroes, but having avowed his determination . . to run them off to Alabama, the defendant refused to surrender them."

Morrison v. Kennedy, 2 Ired. Eq. 379, December 1842. Will of John Patterson: [380] "Having considered my negro man Simon, a slave, to be no part of the aforebequeathed property ['all my personal estate'], I . . ordain . . Kennedy [executor] the sole management and control over . . Simon. I also exclude Hilly, . . Simon's daughter, as being no part of my property."

Held: [381] "It is extremely probable . . that the testator intended a covert provision for emancipation; but nothing of the kind is brought forward in . . bill or answer, . . the two slaves must be declared . . to be held by the defendant in trust for the next of kin." [Ruffin, C. J.]

Sloan v. Williford, 3 Iredell 307, June 1843. "bill of sale . . 'Received of . . Sloan . . nine hundred dollars in full satisfaction of a negro man . . aged twenty-one or two years, which negro I warrant to be of sound mind and body, and I warrant the right and title . . 1836;' . . The plaintiffs alleged . . that the negro . . was unsound both in body and mind."

Held: [309] "a purchaser may recover on a covenant, that the slave is of sound mind, although he be not an idiot, nor, at the time, a lunatic. If . . one subject to lunacy has a lucid interval at the time of sale, but afterwards became insane, the covenant would be broken. . . So too, if the slave, though not actually an idiot, be so weak in understanding . . as to be unable to comprehend the ordinary labors of a slave, and perform them with the expertness that is common with that uneducated class of persons, his mind must be deemed unsound within the meaning of the warranty." [Ruffin, C. J.]

Re Harding, 3 Iredell 320, June 1843. "a petition . . praying for a sale, in order to make partition of certain slaves held in common by the petitioners; . . decreed . . that a sale should be made"

Lane v. Wingate, 3 Iredell 326, June 1843. [327] "the plaintiff declined selling him, alleging that he wanted Daniel to wait upon an old negro woman . . named Rhoda, who was upwards of one hundred years of age, . . defendant replied, that if the plaintiff would let him have Daniel, he would support old Rhoda during her life; the parties valued Daniel at two hundred dollars, and the defendant executed the agreement" Rhoda remained with the defendant [327] "for about four weeks, after which time she returned to the house of the plaintiff, where

she has remained ever since . . it was worth twenty-five dollars a year to support Rhoda. . . [328] verdict for the plaintiff, assessing his damages at seventy-five dollars."

Williamson v. Canaday, 3 Iredell 349, June 1843. Bill of sale: [350] " 1836, December the 2d. Received of . . Williamson and Co. twenty two hundred dollars . . for two negro men, Ephraim, a blacksmith, about 32 years old, and James, about thirty-three years old, which negroes I warrant sound, healthy and free from all claims " Ephraim " was, at the time of the sale, infected with the small pox, of which disease he soon after died, . . verdict for the plaintiffs, . . damages the price paid for the slave, with interest to the time of the trial." Judgment for plaintiffs affirmed.

Lillard v. Reynolds, 3 Iredell 366, June 1843. [368] " he returned her [Sylvia] to the testator . . and received another slave . . in her stead—that this was done because Sylvia commenced breeding "

State v. Tilly, 3 Iredell 424, June 1843. " the prisoner . . was an overseer of the deceased . . said the deceased accused him of trading with his negroes, . . went off in a run, . . Soon thereafter a negro man of the plantation came to the house . . [426] for a Frow to rive the timber . . A short time after this, another negro of the plantation came running from the same direction in great alarm with the intelligence of the killing. . . [428] Gordon testified . . that he, the prisoner, . . expected they would come together; and if they did, he wished it to be where no one was present but negroes."

State v. Watters, 3 Iredell 455, June 1843. " indictment for a libel . . ' Notice. . . Tinsley . . in a suit wherein . . myself and wife were defendants, swear [*sic*] a wilful lie and I can prove it. . . William P. Watters.' . . The defendant relied on the truth of the charge as a justification. . . defendant and . . Zilpha Thompson were indicted . . 1841, for fornication and adultery. . . proved that they had been married. The State alleged that . . Watters, was a man of color, and that his marriage, therefore, with a white woman, was void. . . [456] Watters, contended that he was descended from Portuguese, and not from Negro or Indian ancestors. . . Tinsly . . swore that he knew the grandfather and grandmother of . . Watters, and they were coal black negroes. . . The defendant and Zilpha Thompson were convicted and punished . . On the trial of this [libel] case, . . witnesses . . swore that . . the mother of the defendant . . was a bright mulatto, with coarse straight hair—that her name was Elizabeth Cullom, and . . lived with . . John P. Watters, who was a white man, but of dark complexion for a white man . . was the reputed father of the present defendant. . . that . . Mary Wootten, the mother of Elizabeth . . was not as black as some negroes they had seen, and had thin lips. . . and sharp features. The defendant then proposed to prove, that Mary Wooten [*sic*] in her lifetime had stated . . that the father of Elizabeth . . was a white man. This evidence was rejected . . The jury found the defendant guilty, . . judgment . . against the defendant,"

Affirmed: [457] "admit that the defendant's grand-father was white, and the grand-mother only half African—of which last there is no evidence, still the defendant would have been within the degree prohibited from contracting marriage with a white woman. . . the act which annuls marriages between the two races, uses the words 'persons of color' . . that expression must be construed in reference to other disabilities imposed . . upon persons of mixed blood. The act of 1777, c. 115, s. 42,[1] . . and the Constitution, article 1st, s. 3, . . designate such persons as those descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person. And thus restricted, the act includes the defendant, . . But we are of opinion that the evidence was properly rejected, independent of the above ground. It was hearsay; . . [458] And, besides, it is well known that persons, of the description of this woman, have a strong bias in their minds to induce the declaration from them . . that their illegitimate child is the issue of a white man: if not to gratify a personal vanity in themselves, for the reason, that it removes their offspring one degree from the humbled caste in which he is placed by law, whereby he is excluded from the elective franchise, and from competency as a witness between white persons, and prohibited from intermarrying with them." [Ruffin, C. J.]

Copeland v. Parker, 3 Iredell 513, June 1843. "an action . . to recover damages for an injury done . . to the plaintiff's slave. . . she had hired the boy Gilbert . . about twenty years of age, to certain gentlemen, who were opening a turnpike road . . for the year ending the 25th of December, 1840; that, in November, 1840, the defendant, at . . ten paces, fired at him with a shot gun, loaded with squirrel shot, and lodged the load in his back and thigh. . . Gilbert was disabled from work for the balance of the year, and for nearly half the year, 1841. . . The defendant . . proved that he was the overseer . . that Gilbert had left his work without leave the day before, but came back in the morning . . that about 10 o'clock the defendant requested the witness, who was passing by, to stop and help him whip Gilbert for having run away. As the witness was getting off his horse, Gilbert . . [514] started off in a walk; the defendant ordered him to stop; Gilbert . . rather quickened his pace, and the defendant then fired and brought him to the ground. . . verdict for the plaintiff, and judgment"

Affirmed: "The overseer . . had no right . . to use a deadly instrument to stop him." [J. J. Daniel, J.]

Ford v. Blount, 3 Iredell 516, June 1843. In June 1838 "Skinner gave high prices for the negroes, much more than they could be now sold for;"

Satterwhite v. Carson, 3 Iredell 549, June 1843. In 1838 a deputy sheriff [550] "levied upon and sold the boy James to one Jay, for $401, who took the slave out of the State."

[1] Rev. St., ch. 111, sect. 74.

State v. Sandy (*a slave*), 3 Iredell 570, June 1843. "an indictment . . for burning the store-house of . . Cowan, and concluded 'against the form of the statutes, etc.' . . [571] store had been broken open, robbed and set on fire . . that, the next day, goods, which he identified as his, were brought to him—that, having reason to believe that the prisoner . . was the perpetrator . . he asked 'what had become of the rest of his sugars?' to which the prisoner replied, 'that the boat was so heavily loaded that he had thrown it overboard'—that he then asked the prisoner, how he got into the store, to which the prisoner replied that he forced the door with crow bars . . then asked . . who put the fire to the store, to which the prisoner replied that he did, but he did not do it alone, and then mentioned another negro . . that all this the prisoner answered, without any violence, threats or persuasions . . [573] The jury found the prisoner guilty . . judgment pronounced"

Judgment arrested: [574] "there cannot be judgment on this indictment, because it concludes 'against the form of the statutes,' while the offence depends on but a single statute." [Ruffin, C. J.]

Means v. Hogan, 2 Ired. Eq. 525, June 1843. [526] "a large number of slaves belonging to the estate were ordered to be sold by the master [in chancery] for distribution, . . [527] The bill . . charges, that . . Hogan purchased most of them at an undervalue, upon a representation that he was buying for the owners, and thereby kept off other bidders, and that . . he made large profits by a re-sale shortly afterwards,"

Held: [529] "He was the largest owner of the property offered, and might fairly bid to enhance the price,"

Everitt v. Lane, 2 Ired. Eq. 548, June 1843. [549] "'My will [made in 1838] . . is, that three of my negroes be sold, to-wit, Bill, Burwell and Edmund.' . . the provision . . for the payment of the testator's debts, . . the proceeds of their sale amounted to $1505 75"

Cheshire v. Cheshire, 2 Ired. Eq. 569, June 1843. "Cheshire . . 1832, . . bequeathed two slaves . . to his wife Susannah . . for life, remainder to the plaintiff; . . Susannah . . 1835, . . conveyed an absolute estate in . . the said slaves" for $960, [571] "to Burch Cheshire . . known to her to be entirely insolvent, who went . . with Henderson to Alabama, where the slaves were sold . . for $2100. . . [572] Henderson's wagons carrying some of his [Cheshire's] clothes, and some of his provisions; Burch having neither horse nor wagon."

Held: [573] "the plaintiff . . is entitled to [the purchase money,] . . with interest . . from the death of Mrs. Cheshire."

Hudgins v. White, 2 Ired. Eq. 575, June 1843. In 1837 a negro man, about 27 years old, was hired for $75 per annum.

McBride v. Choate, 2 Ired. Eq. 610, June 1843. [612] "Choate got the negroes from Elizabeth Woodruff, carried them off clandestinely to Georgia, and thence removed them to New Orleans for the purpose of selling them, . . [613] with full knowledge that . . Elizabeth had but a life estate in them,"

Sasser v. Jones, 3 Ired. Eq. 19, June 1843. [28] "in the deed of gift [of the negroes] . . one or two changes . . were made to keep families together, . . [38] the trustees of Arthur Jones had become alarmed at a report, that young Arthur was about to run away the negroes, . . [48] after reserving out of the negroes [five] . . which it was agreed should remain with the old man to take care of him, the rest were put into lots, . . [49] agreed, upon the suggestion of Charlotte Smith, who wanted a lot in which a particular negro was contained, that they would agree as to their respective allotments without an actual draw,"

Beam v. Blanton, 3 Ired. Eq. 59, June 1843. At a sale in June 1842 [60] "Clark, bid off a negro man slave . . at the price of three hundred dollars and five cents,"

Locke v. Gibbs, 4 Iredell 42, December 1843. "malicious prosecution of her negro slaves, in consequence of which she had been deprived of their services, and put to costs in paying their jail fees."

Hare v. Pearson, 4 Iredell 76, December 1843. "the defendant rented a small tract of land to . . Powell, a free man of colour, for . . 1841, . . Powell cultivated the land in corn, and agreed to give the defendant one half of the crop."

Walker v. Reed, 4 Iredell 152, December 1843. In 1831 "Peg, with two children . . both boys" were exchanged for a negro boy. In 1843 Peg and her two children [154] "were worth $375 each."

Skinner v. Skinner, 4 Iredell 175, December 1843. "he had come [in 1839] to get two of William's negroes to assist in clearing out a fishing ground,"

Hale v. Gause, 3 Ired. Eq. 114, December 1843. [115] "he has sold her to a man in South Carolina for $334."

Miller v. Ellison, 3 Ired. Eq. 123, December 1843. Will of Simeon McMasters, who [124] "died about the year 1840. . . gave to . . Ellison and . . Kemp a tract of land containing 150 acres. . . to . . Ellison his slave Creecy, and to . . Kemp his slave Aaron. . . all the residue . . to . . Ellison and . . Kemp. . . the testator enjoins it upon his executor [Miller] to use all lawful ways and means to emancipate the slaves . . according to the laws of this State. . . 'and if, at any time, their liberation shall be effected . . whether they shall continue to reside in this State, or consent to remove as now required by law, that then, on their becoming . . emancipated, my will . . is that all the . . estate . . shall be vested in them, . . Creecy and Aaron, . . so far as they may be capable of holding the same, or so much . . as may not have previously been expended by . . Ellison and . . Kemp, who, in the event of such emancipation . . shall be considered as *trustees* only for the uses . . herein last expressed . . but in case such liberation shall not take place, . . all the devises and bequests . . to . . Ellison and . . Kemp are to be absolute,' . . The plaintiff [executor] then states, that he . . refuses to execute the bond, required by the act of Assembly, . .

and calls on Kemp and Ellison . . and . . the next of kin and heirs at law of the testator, to interplead. . . The answers of the heirs and next of kin state, that they have never set up any claim to the property. . . [125] Ellison and Kemp claim the property, alleging that as the executor refuses to make any attempt to effect the emancipation . . no one else has a right to do so,"

Bill dismissed: "the two slaves . . are not before the court, either by the Attorney General or any relators." [J. J. Daniel, J.]

Jones v. Loftin, 3 Ired. Eq. 136, December 1843. "Sarah Loftin, in February, 1818, for $750, sold to . . Jones . . the slaves Fan and her children Ham and Joe;"

State v. Hart, 4 Iredell 222, June 1844. "an indictment against the defendants for assault and battery in shooting the prosecutor's slave."

Tilly v. Norris, 4 Iredell 229, June 1844. "the defendant claimed to be entitled to a set-off, consisting of the amount of an account against a slave of the intestate for work and labor rendered to him (the slave) at his request, and money loaned to the slave. . . the plaintiff gave in evidence sundry cases, in which the master had ratified bargains of the slave, such as contracts for jobs of work, and had claimed the benefit of them; . . also the master's declarations, going to shew a general licence to the slave to make bargains to bind him. . . the plaintiff then offered to shew declarations . . tending to rebut this presumption of a general licence; such as his [intestate's] declarations, upon discovering the slave's engagements, that he had used every effort to prevent the slave from acting in such matters without his express authority, and threats to sue persons for employing him without his permission."

Held: [230] "A general license, by the master to his slave, to make bargains for work to be done only for the benefit of the slave, and also . . to borrow money on his own account, would not render the master a *debtor* to a person, who would be so inconsiderate as to run up an account with a slave thus licenced." [J. J. Daniel, J.]

Foggart v. Blackweller, 4 Iredell 238, June 1844. "when each negro was offered by the crier, he was, by the directions of the defendants, offered as a sound negro, until they came to one, who was injured in one of his feet, and him they directed to be sold as unsound, which was done."

State v. Hart, 4 Iredell 246, June 1844. "Kee, in whose service the slave . . [247] was, suspected that the defendant induced the slave to steal his cotton and traded with him for it; . . Kee directed the slave, on a particular night, to take a bag of cotton to the defendant's house, and . . requested two white persons to watch the defendant's house, . . to prove the trading, if it should take place. . . the slave . . also took an empty jug . . about two hours before day in a very dark night. The two persons . . saw the negro go up to the house and heard him call the defendant two or three times; when the door was opened . . After a short time the slave returned . . with his bag empty and with about one quart of spirits in his jug."

Held: [249] "even the consent of the owner in writing is not sufficient, to justify the trading with a slave for a forbidden article in the night time."

Moore v. Gwyn, 4 Iredell 275, June 1844. [276] "in . . October, 1842, . . administrator . . set up the slaves to the lowest bidder for the remainder of the year, when the plaintiff bid off the slave Ann at the price of three or four dollars, and permitted the witness to retain her."

Werd v. Hatch, 4 Iredell 282, June 1844. "$1285, . . being the price of a negro man . . purchased" on or before February 10, 1837.

State v. Pollok, 4 Iredell 305, June 1844. "Watson, the prosecutor, with his son and a slave, . . March, 1842, the regular period for beginning the annual work of getting turpentine, proceeded to cultivate the trees by chopping [*sic*] them, . . [306] the second week . . the two defendants, with five or six negro men, also went on the ground, and the slaves were ordered by Pollok to go to chipping. . . Watson and his slave went off"

State v. Williams, 4 Iredell 400, June 1844. "the witness for the State swore, that he was the overseer for the defendant during . . [401] 1841, 1842 and 1843—that . . 1842, . . the defendant, having lost some corn and shoats, and suspecting his slaves . . of stealing the property or knowing who had stolen it, directed the witness to put them to work on the Sabbath day and continue them at work on the succeeding Sabbath days, until they confessed . . that the work consisted in putting up fences round his field and whiskey distillery—that after working them the third Sabbath, the defendant, discovering who had stolen his property, did not compel them to work any longer. . . that the negroes did not work the whole of the days as before mentioned, but commenced work after breakfast and ended about 12 o'clock or dinner time, and that their work was not of much value . . the place where the work was done was at such a distance from any public highway, that the laborers could not be seen, by persons passing"

Held: not an indictable offence.

State v. Scott, 4 Iredell 409, June 1844. "The prisoner was indicted for the wilful murder of . . Johnson. . . [412] The prisoner, the deceased and all the witnesses [except two] . . were colored persons." [411] "Grant [one of the white witnesses] . . heard the deceased say he would kill the prisoner, if there were no other negro left in the State, and that he informed the prisoner of the threat." A colored witness testified, "that the deceased had been on good terms with a yellow girl . . but had had a falling out with her, and she had come to stay at witness's house where the prisoner was boarding. . . [412] The jury found the prisoner guilty of murder, . . motion [for a new trial] was overruled and sentence of death pronounced, . . No counsel in this [supreme] court for the defendant." Judgment affirmed.

Setzar v. Wilson, 4 Iredell 501, June 1844. [509] "February, 1842, . . a bill of sale . . for a negro boy . . fifteen years old, in consideration of $486,"

Harris v. Delamar, 3 Ired. Eq. 219, June 1844. [221] "In the will, Mr. Delamar gives Bridget and her four children then born to the present plaintiffs [his grandchildren], and directs that they shall be hired out until . . [222] the youngest child of his daughter, should arrive to 21 years, and the hires applied to the education" of his youngest grandchild and granddaughter.

Paxton v. Rhea, 3 Ired. Eq. 248, June 1844. Will of Paxton who died in 1781: "I . . bequeath to my child that is not born . . [249] the first child that the negro wench Sive does have, if she should have any." [252] "in . . 1823, when the boy was purchased for $300, . . the one-half the price of Rose and her increse [*sic*] (upwards of four) must have been considerably larger"

Henderson v. Burton, 3 Ired. Eq. 259, June 1844. In 1841 Fullenwider [261] "executed . . a conveyance for a large estate, consisting of a number of slaves and divers valuable tracts of land, and iron factories,"

State v. Fuller, 5 Iredell 26, December 1844. Dr. Smith testified that sometime between 1818 and 1822, "a girl between six and twelve years old . . was badly diseased with white swelling in one of her legs, . . that the intestate despaired altogether of her recovery, and declined employing a physician to attend her, but told . . his son, . . [27] that if he . . would employ a physician . . at his own expense and could have her cured, he might have her . . that the witness succeeded in effecting a cure, and that the [son] . . paid . . $25 therefor . . that if the said slave had been well, she would have been worth, at the period referred to, $250 or $300, but in her diseased condition she was not worth more than $100 . . that the charge for his medical attendance was quite low."

Kinney v. Etheridge, 5 Iredell 34, December 1844. "Saunders filed a petition . . stated, that the expense of the ward's education exceeded the income of his estate, and prayed that two of his negroes should be sold under the direction of the court . . a decree was made,"

State v. Doctor F. Mann, 5 Iredell 45, December 1844. "an indictment, for an assault . . the defendant presented a loaded pistol at . . the prosecutor, while he was attempting to enter the house of the defendant, in the day time . . by virtue of a warrant . . to search . . for a negro" [46] "that had runaway"

Simpson v. Boswell, 5 Iredell 49, December 1844. Will, 1832: [50] "I give to my son . . a negro man . . and his smithing tools,"

Freeman v. Lewis, 5 Iredell 91, December 1844. [92] "in 1818 or 1819, he sold one of Hannah's children in Georgia, . . [Later on] he sold another of Hannah's children"

Buie v. Kelly, 5 Iredell 169, December 1844. In June 1838 a negro woman and her child were sold at auction for $672.

State v. Hooper, 5 Iredell 201, December 1844. "The defendants were tried in May, 1842, on an indictment for adultery; and their defense was, that they were man and wife. The jury found . . that the defendant, Hooper, is a free man of color, and the defendant, Suttles, a white woman, and that they intermarried . . in this State about ten years before that time, . . The court held, that, as the marriage was before the act of 1838, ch. 24, which prohibits marriages between colored and white persons, the marriage . . was not unlawful,"

Judgment for defendants, reversed: "His Honor overlooked the previous statute of 1830, ch. 4, . . [202] not re-enacted among the Revised Statutes of 1836. Its omission . . rendered necessary the act of 1838 to the same effect, as by the Revised Statute, c. 1, sec. 2, all prior statutes were repealed. But the same act declares such repeal should not affect . . prosecutions, arising before the repeal;" [Ruffin, C. J.]

State v. Armfield, 5 Iredell 207, December 1844. In 1843 [208] "the three defendants [white laborers] went to the dwelling house of . . Myers, after dark, and asked permission to stay all night; Myers . . ordered the slave Baal to take their horses and put them in the stable; the defendants went to accompany the slave; a few minutes afterwards, the slave was heard to cry out, as if in distress—that Myers, with . . Armsworthy . . immediately set out in the direction of the noise; . . they found Baal tied . . they both demanded to know what the meaning of this conduct was; either Booe or Armfield said, they had a process against Baal for stealing, and they meant to take him to a neighboring blacksmith's shop for trial; both Myers and Armsworthy demanded to see their process, but they refused to shew it; . . then demanded the liberation of the negro, . . refused; the defendants then went off with the negro; . . before they got to the place mentioned for trial, Martin told Armsworthy that they had no process against Baal, that this was all a sham. . . [209] they did not mean to stop at the blacksmith's shop; . . [210] The jury found the defendants guilty. . . judgment . . against the defendants," Affirmed.

State v. Clarissa (*a negro slave*), 5 Iredell 221, December 1844. "The defendant was indicted . . [222] 'The jurors . . present that Clarissa, a slave, late the property of . . Butt, . . July, 1842, . . unlawfully did hire her own time, contrary to the form of the statute' "[1]

Indictment quashed: [224] "For aught that appears on it, she never was permitted to go at large, which is indeed the *gravamen* of the offence . . and essentially necessary to its completion."

State v. Newsom, 5 Iredell 250, December 1844. "The defendant, a free person of color, was tried upon the following indictment, viz: . . 'did carry about his person, one shot gun, without having obtained a licence therefor from the Court . . [251] within one year preceding' . . the jury found the defendant guilty; . . the court arrested the judgment,"

[1] Rev. St., ch. 111, sect. 31.

Held: [255] "there was error in rendering judgment against the State." The act of 1840, ch. 30, is not unconstitutional: [254] "free people of color cannot be considered as citizens, in the largest sense of the term, or, if they are, they occupy such a position in society, as justifies the legislature in adopting a course of policy in its acts peculiar to them; so that they do not violate those great principles of justice, which ought to lie at the foundation of all laws." [Nash, J.]

Hines v. Butler, 3 Ired. Eq. 307, December 1844. "The plaintiff, being much pressed for money, . . employed the defendant as his agent to take eight of his slaves to Alabama, and sell . . for cash. The defendant . . sold them at high prices on credits, and took bonds for the purchase money."

Guyther v. Taylor, 3 Ired. Eq. 323, December 1844. Will, 1836: "It is my will, that my negroes . . shall be kept on the plantation . . until my son . . attain the age of 21 years." [324] "the profits of the plantation . . on which his slaves have been kept and worked . . have not been sufficient to educate and maintain the three younger children, and discharge the legacy of $1000,"

Thompson v. Newlin, 3 Ired. Eq. 338, December 1844. See Newlin *v.* Freeman, p. 93, *supra*. "The bill was filed by the next of kin of Sarah Freeman, . . [339] late the wife of Richard Freeman; and states, that, by her marriage settlement, she was entitled, to her separate use, to a considerable number of slaves and other personal estate, . . that she . . intended, that, after her death, her slaves should not serve any person in a state of servitude, . . the defendant, Newlin, is a member of the religious society, called Quakers, and that all the members . . are opposed, . . upon a religious principle, to slavery, and that the defendant will not hold slaves as property and for his own use; and that he had taken an active agency in procuring the manumission of slaves and had taken conveyances of slaves absolute, apparently, but had suffered such slaves to enjoy the privileges of freemen. . . the testatrix well knew . . the religious principles above mentioned of himself . . and that, in fraud of the laws of the State and the public policy, she . . bequeathed to . . Newlin all her slaves and other estate, but with the intention . . that . . Newlin should hold the negroes, not for himself, but for their own benefit . . and for the purpose of their enjoying a qualified freedom, and that he should hold the residue of the estate in trust for the said negroes. . . [340] that such a purpose was unlawful . . and that a trust of the slaves and other personal estate results to the plaintiffs, as next of kin. The bill, therefore, prays a discovery, an account and relief."

Held: the defendant must discover the trust. [342] "The law will not allow itself to be baffled . . by secret agreements," [341] "if, in truth, the trust was to send them out of the State, and the defendant intends to do so, . . and will enter into the obligations, which the law[1]

[1] Act of 1830. Rev. St., ch. 101.

requires, that they shall not return, then let him thus answer, and that will terminate the plaintiff's claim.[1] But upon the supposition, that the trust was, that the slaves should be kept here, in which case the defendant could not carry them away without a breach of trust; . . there is a resulting trust for the plaintiffs." [Ruffin, C. J.]

Cowles v. Buchanan, 3 Ired. Eq. 374, December 1844. [375] "he is tenant in common with the defendant, of the negro woman . . that he has called upon the defendant to account with him for his share of the services . . and also to make sale of said negro for the purpose of division,"

Heathman v. Hall, 3 Ired. Eq. 414, December 1844. [416] "the sale of Lucy by the constable, . . he purchased her [in 1821] for $300. . . hired her at the price of $50 a year,"

State v. Reed, 5 Iredell 357, June 1845. In 1837 "the constable levied an execution . . amounting to about thirty dollars, on a slave . . and sold the same for about five hundred and eighty-four dollars."

Haywood v. Long, 5 Iredell 438, June 1845. "The defendant . . hired to . . Long, for the year 1843, a slave . . During the year the slave was taken sick, and . . Long, without the . . knowledge of the defendant, called on the plaintiff, who is a physician, to attend the slave, . . [439] upon application to the defendant for payment he refused it, . . and the plaintiff then brought this action for his bill for medicines and attendance, . . the court non-suited the plaintiff," Judgment affirmed.

Duffy v. Averitt, 5 Iredell 455, June 1845. [456] "the defendant was the owner of twenty-eight hands, liable by law to work on this district of road,"

Jones v. Allen, 5 Iredell 473, June 1845. "an action of assumpsit for $60 . . The plaintiffs are physicians, . . in partnership, and declared for professional services, rendered in 1843, to a female slave, the property of the defendant. . . Watkins hired the said slave for . . 1843, . . and that, while the slave was so in his possession, she . . required medical aid, and that he, at the . . request of . . Watkins, rendered the services, . . The plaintiffs then offered to prove . . that, in the section of country (Caswell County,) where the hiring took place, it was the universal custom for the owners . . to pay the expense of the medical attendance, requisite for the slaves, while hired out, . . evidence . . excluded . . a verdict and a judgment . . for the defendant," Affirmed.

Gaither v. Williams, 5 Iredell 487, June 1845. In 1836 Dick was sold for $600.

Ratliff v. Huntly, 5 Iredell 545, June 1845. "action of trespass . . for beating the plaintiff's slave Mary. . . It was insisted by the defendant, that the slave then belonged to him. . . Immediately after he had beaten the slave, in the plaintiff's field, where she was then at work, . . he cursed . . the plaintiff, (who was absent) and threatened to shoot

[1] See same *v.* same, p. 141, *infra.*

or otherwise injure him. . . [547] The Jury found a verdict for the plaintiff—damages ['smart money'] $100." Judgment thereon, affirmed.

Arrington v. Gee, 5 Iredell 590, June 1845. [591] "Arrington . . took to . . Alabama, many slaves, and sold them . . to . . Gee, for . . $24,000, one-half of which was paid in cash,"

Buchanan v. Parker, 5 Iredell 597, June 1845. "a resident of . . Georgia, placed in the hands of the defendant $700, that he might purchase for her two negro boys in North Carolina, . . and bring them out to her in Georgia. . . if the . . money should not be enough, she would thank him to make up the balance, and she would repay him"

Hall v. Paschall, 5 Iredell 668, June 1845. [670] "Little Summerset was a child of Alley, . . and was sold by Thomas Christmas as early as . . 1830, to . . Christmas, of Tennessee, . . for . . $250, . . his value. Dilly was sold . . in 1833, . . to some one beyond the State for $300, . . her value, . . Sally was a child of . . Mary [deceased], and was sold . . in . . 1836, and was . . of the value of $600. . . to some one beyond the limits of the State."

Logan v. Simmons, 3 Ired. Eq. 487, June 1845. She [488] "possessed two female slaves, of whom one was thirty-seven years old and had ceased child-bearing, and the other was a girl, named Poll, about sixteen years old. . . conveyed by deed of gift to her son . . the two negroes . . reserving . . to herself, the first living child, which the girl Poll might have."

Howell v. Howell, 3 Ired. Eq. 522, June 1845. [523] "one of them is hired to work in a gold mine, whereby his value will be impaired,"

Christmas v. Mitchell, 3 Ired. Eq. 535, June 1845. [537] "has sold [since 1827] one of the . . negroes . . Tom, to persons who have carried him out of the State, and that he received for him $800, . . [538] the sale was made in Richmond by an agent,"

Acheson v. McCombs, 3 Ired. Eq. 554, June 1845. Will, 1842: "as for my negro woman Hannah, that I let my daughter Jane Kerr have the use of, and the increase of . . Hannah, that she shall have after this date, I give to my daughter Jane's increase, that she may bear after this date, and . . Hannah to remain with . . Jane until done bearing, then at her own disposal."

Waddill v. Martin, 3 Ired. Eq. 562, June 1845. "James H. Martin was a wealthy planter of Anson county, who made his will . . in which he appointed the plaintiff, a son-in-law, his executor, . . [563] The first exception is to a credit allowed to the plaintiff, of $143 97, (with interest thereon) which the plaintiff received for certain cotton made by the negroes of the testator in . . 1836, and paid by him to the negroes. . . The testator . . had been for many years in the habit of allowing his negroes to make small crops of cotton and other things, in patches of their own and for their own use. He did not, however, permit them to sell the cotton themselves, but required them, as they picked it out, to

bring it to his gin; and the testator had it ginned and carried to market and sold with his own, and then, after deducting a due proportion of the expenses, the testator paid to the negroes the cotton made by them, to enable them to purchase small articles of comfort for themselves and their families. In the year 1836, the testator's slaves had, by his permission, planted and cultivated their patches of cotton on his land: in autumn, they gathered it and delivered it to the plaintiff at the gin, to be prepared and sold for them by him, when he should sell that belonging to the estate. It was accordingly sent to market and all was sold together, and entered by the commission merchants in the accounts of the estate; so that the plaintiff in his own account as executor, gave the estate credit for the proceeds of all the cotton. But when he paid to the negroes their share of the money, viz: the sum of $143 97, he debited the estate therewith by way of cross entry."

Exception overruled: "The practice of the testator, as a master, and the conduct of the plaintiff, as executor, conform to the usage, and a most beneficial usage, which is almost universal throughout North Carolina; and we have never known or heard of an attempt hitherto, to charge an executor in favor of a legatee or even creditor, with the little crops of cotton, corn, potatoes, ground peas and the like, made by slaves by permission of their deceased owners. . . [564] it has never been considered that the negro's little crops, growing or made, were assets, any more than the little sums of money which they might have received for the crop of the preceding year, if any remnant were left in their chests, or their poultry, or their dog, or their extra clothing. Those petty gains and properties have been allowed to our servants by usage, and may be justified by policy and law, upon the same principle, that the savings of a wife in housekeeping, by sales of milk, butter, cheese, vegetables and so forth, are declared to be, by the husband's consent, the property of the wife. It is true a slave cannot have property; . . But it is equally true that a married woman can have no property in money or personal chattels in possession; but they belong in strict law to the husband, . . Nevertheless, the wife may claim them against the executor. Now we do not say, that negroes can hold any thing against the executor, because they and what they have belong, . . to the executor. But we do say, that an executor is not bound to strip a poor negro of the things his master gave him, nor to take away his petty profits from a patch, with the proceeds of which the slave, with the ordinary precaution of a prudent and humane master, may be induced, and in a measure compelled, to buy those needful comforts of food and raiment, over and above the allowances of the owner, which promote his health, cheerfulness and contentment, and enhance his value. In many instances, what the slave, with a pride that makes him happy, buys for himself, would, if not thus procured, be of necessity supplied directly by the master; so that, in point of fact, leaving to the negro the spending of his money at his own pleasure, is then a pecuniary saving to the estate; and these slight indulgencies are repaid by the attachment of the slave to the master and his family, by exerting his industry and honesty, and a spirit to make and save for the master

as well as for himself. . . [565] there is scarcely an owner of slaves, who does not act as this testator did, and no executor, we believe, ever acted otherwise in such a case, than the plaintiff did. . . Indeed, there are a number of statutes, which in regulating trading with slaves, recognize a sort of ownership by slaves of certain articles, by permission of the master, forbidding them to have certain other articles or to sell or buy them; which shews, that there is an universal sense pervading the whole community, of the utility, nay, unavoidable necessity, of leaving to the slaves some small perquisites, which may be called his and disposed of by him as his, although as against a wrong doer the property must be laid in the master, for the sake of the remedy, and although the master, if he will, may take all.—Here the sums received by the negroes were but a pittance *per capita*; not more probably, than the ducks, chickens and eggs of the same number of slaves would have brought, nor half as much as their Sunday finery would. The exception prefers an ungracious claim, and as we think an unfounded one;" [Ruffin, C. J.]

State v. Hailey, 6 Iredell 11, December 1845. Special verdict: "That in the captain's district, in which the defendants live, there were eight persons appointed Patrollers for . . 1844, by the committee of patrol, and . . that three . . went to the house of the defendants in the night as patrol, . . they went to the cook-house or kitchen, . . within the curtilage; . . were met at the door . . by the defendants; . . and the entry prevented by threats and weapons . . [12] the defendants negroes slept in said house, . . the County Court . . had not made any rules . . for the government of the patrol." The presiding judge "was of opinion, that the house in question was the subject of search, but as the County Court . . had made no rules . . less than a majority could not act; that the resistance . . was not criminal,"

Judgment affirmed: the powers of the patrol "partake of a judicial, or *quasi* judicial, and executive character. Judicial, so far as deciding upon each case of a slave taken up by them; whether the law has been violated . . and adjudging the punishment . . five stripes may in some cases be sufficient, while others may demand the full penalty of the law. All these acts . . [13] require consultation and agreement, and a less number than a majority of the whole cannot act. . . a plurality of those present must agree, or no punishment can be legally inflicted." [Nash, J.]

State v. Cozens, 6 Iredell 82, December 1845. [83] "The indictment[1] charges, that he [a free man of color], . . 'Feb. 1837, . . did buy of, . . and receive from a certain negro slave . . one peck of corn,' . . the jury convicted the defendant. . . [84] the judgment below is affirmed."

Person v. Twitty, 6 Iredell 115, December 1845. In 1845 [116] "Jacob [was] of the value of $500 and Ritter of the value of $700,"

Cox v. Williams, 4 Ired. Eq. 15, December 1845. Will of Mary Bissell: "I direct that my servant women, Molly and Maria, Maria's two

[1] "for a violation of the 5th sec. of the Act of 1826,"

children, named Mary and John, and three other children, Nancy, Priscilla and Lucy, all of whom are my property, be made over to the American Colonization Society, or to any individual authorised by the American Colonization Society to receive them, on condition that said Society will engage to send them to either of its Colonies in Africa; and that the said Society may be at no expense in sending them as directed, I wish two vacant lots belonging to me in the town of Edenton, to be sold to defray their expenses, and certain other monies also to be appropriated to their use, as is hereafter directed. . . If there should be any balance after the settlement of my estate, agreeably to the tenor of this will, I direct that it be all paid over to the American Colonization Society, for the exclusive use of the servants to be sent by them to Africa." "The bill is filed by the executor, against the next of kin of the testatrix and the American Colonization Society, . . and prays the Court to put a construction on the will, . . [16] The answer of the American Colonization Society states that the Society has been duly incorporated by two acts of the General Assembly of Maryland, with power and capacity to receive gifts and bequests of slaves for the purpose of transporting them, with their own consent, to Africa, where several colonies of free persons of colour have been established, under the auspices of the Society; and also with power and capacity to take gifts or bequests of money and other things needful to defray the expenses of transportation and to provide for the comfort of the colonists in Africa. And the answer further states, that the Society has been duly organized and has accepted the charter. The answer also engages, if the bequests to the Society should be held good, to remove the slaves, with their own consent, as soon as practicable, from this State to one of the said colonies in Africa, and thereby bestow on them emancipation." "the next of kin, on the other hand, insisting that the provision for emancipation is against law,"

Held: "a bequest of slaves for the purpose, or upon trust, to send them to another country, there to become and remain free, is valid. . . [17] It was, indeed, early found in this State, as in most of the others, in which there is slavery, that the third class of free negroes was burdensome as a charge on the community, and, from its general characteristics of idleness and dishonesty, a common nuisance. Hence the legislative policy, with us, was opposed to emancipation, and restricted it to a particular mode and upon a special consideration—which was by license of the Court and for meritorious services. But that was purely a regulation of police, . . It sought only to guard against evils arising from free negroes residing here. . . it was not intended to impose any restriction on the natural right of an owner to free his slaves. . . all our legislative regulations had a reference exclusively to emancipation, within our limits, of slaves, who were intended to remain here. . . by a modern statute, 1830, c. 9, the policy is avowed of encouraging emancipation, upon the sole condition, that the people freed shall not disturb or be chargeable to us, but keep out of our borders. . . [18] The trust in this case must therefore be declared valid; and the Colonization Society authorised to receive the slaves, and the surplus of the estate, (after paying the

costs of this suit,) for the purpose of removing them to Africa, as directed in the will. This direction, however, is necessarily dependent on a fact, to be ascertained by an enquiry; which is, whether the negroes, who are adults, are willing to go to Africa or not. . . [19] For those who are under, say the age of fourteen—their parents may elect. If any adult should refuse to go, those refusing must, of necessity, be sold, and the proceeds will go into the residue for the benefit of those who will go—according to the last clause of the will, which excludes the next of kin altogether, unless all the slaves should refuse to go. If any of the children have no parents, or their parents should elect for them not to go, liberty must be reserved to such children to make their election, when they shall arrive at the age of fourteen. It appears, indeed, that the money remaining in the hands of the executor is partly the proceeds of the sale of one of the negroes, which was rendered necessary for the payments of debts. Of course, all these charities must depend, for their validity, on the power of the party who creates them, without doing injustice to creditors. Justice stands before generosity; and the owner of a slave cannot defeat the rights of a creditor by manumitting the slave. The Colonization Society can therefore claim only the slaves which remain unsold, and can have, immediately, only such as may be willing to go." [Ruffin, C. J.]

Denny v. Closse, 4 Ired. Eq. 102, December 1845. Will: "I . . bequeath to her my negro girl Mary, . . during her natural life, and at her death, I allow the said negro to be sold, and her issue, if she should have any, and the money arising . . to be equally divided among all my children"

Hawkins v. Alston, 4 Ired. Eq. 137, December 1845. In April 1843 witness [143] "gave . . Alston . . $337 50 for 3-4ths of Caroline, . . that the woman and two boys (of whom one was 13 years old,) . . were worth $800, if he had owned the absolute property; . . latter part of . . 1843, . . Alston sold to the witness, Hester and her child, at . . $500, and the boy Trim at . . $400, and . . another woman and child to some other person, . . and . . sent the remaining negroes, except one, to the South,"

Guilford v. Guilford, 4 Ired. Eq. 168, December 1845. Will, 1837: "At the expiration of two years, I leave my negroes, (except Dan) to be sold" The testator bequeathed Dan "to Alvana Morris, an infant, and says, 'I wish my executor to hire him out, and apply the proceeds, or so much thereof as may be necessary to raise, clothe and educate said child. And if . . [169] Alvana . . should die before she arrives at the age of twenty-one years, then . . Dan . . to be sold by my executor;'"

Williams v. Alexander, 4 Ired. Eq. 207, December 1845. In 1813 [208] "she purchased the negro girl . . then an infant, from her brother . . for . . $100,"

State v. Roland, 6 Iredell 241, June 1846. "an indictment against . . a free person of color, for marrying a slave contrary to the provisions

of the Act of 1830," [1] He was found guilty at Spring Term, 1844. [242] "At Spring Term, 1846, . . the State . . prayed judgment against him . . The defendant resisted the motion, because, as he then said, the master of the slave . . had originally given his consent . . If this assertion was true, the Act . . passed in . . 1845 repealed the first Act, so far as it related to the defendant's case; and no judgment should have been rendered against him." [J. J. Daniel, J.]

Rogers v. Vines, 6 Iredell 293, June 1846. [294] "The negroes . . being a woman and her two small children, they were, taken together, unprofitable to Mrs. Rogers, and she sold them . . August, 1838, for $1000, then paid to her."

State v. Jefferson (*a slave*), 6 Iredell 305, June 1846. "The prisoner, a slave . . was convicted of a rape upon . . a white woman. . . she was a witness, and proved the offence fully. . . the prisoner . . alleged that it was by her consent, and that there had been a previous criminal intimacy between them. . . offered to prove by a witness . . the Court rejected this evidence. After an answer in the negative to a question . . [306] whether she had not allowed the prisoner to put his hands on her in a . . familiar manner, it was proved by another slave . . that he had frequently seen the prisoner treat her in that manner. And the prisoner offered further to prove that the witness . . had permitted other negro men to kiss her and take other liberties with her. . . rejected . . The prisoner offered further to prove, that . . the husband, had in the presence of his wife offered to compound this prosecution with . . the owner of the prisoner. . . the Court refused to admit it. . . confession of the prisoner; . . Springs . . stated . . after the prisoner had been committed to jail . . he saw the prisoner . . said, 'Yes, I have heard of you; and it is said you choked her, and had your will of her;' and the prisoner answered, that he did. The witness . . asked the prisoner why he did so, and the latter replied, that he supposed he must have been drunk; and that to the question . . 'Did you know it would hang you?' the prisoner replied that he did not. . . counsel for the prisoner objected; but the Court received it. After sentence of death upon conviction, the prisoner appealed"

[309] "nothing is found . . on which the judgment ought to be reversed;"

Wardens v. Silverthorn, 6 Iredell 356, June 1846. [357] "The wardens had maintained an aged slave . . belonging to the estate of . . Silverthorn,"

Whiteley v. Daniels, 6 Iredell 480, June 1846. [481] "The defendant was warranted, to recover the amount of a penalty alleged to have been incurred by him, in illegally trading [2] with a slave by the name of Ganze, . . The defendant admitted that his agent, at his landing, had received such articles from Ganze . . and that he had received them, but did not

[1] Rev. St., ch. 91, sect. 77.
[2] *Ibid.*, ch. 34, sect. 75.

know there was no permission in writing; that they had been entered on his barter book, but were not paid for,"

Hill v. Spruill, 4 Ired. Eq. 244, June 1846. [245] "The property consisted entirely of personalty, and chiefly of forty-one negroes."

Spencer v. Hawkins, 4 Ired. Eq. 288, June 1846. [291] "Court executions, under which . . Daphne was . . sold. The child of Daphne was taken by . . a constable, under an execution in favor of . . Gaylard, issued . . 1843." In 1834 Daphne [292] "was sick for a month, and complained of pains in her limbs. Dr. Royster . . considered it rheumatic and chronic. . . Opposed to this testimony, . . Mrs. Estis . . has known her from childhood up to 1842—never knew anything the matter . . [293] the defect in her ankles belonged to her family . . Hicks' deposition . . Daphne is an excellent hand and the strongest but one he saw in lifting."

Moore v. Banner, 4 Ired. Eq. 293, June 1846. [294] "in 1843 he purchased . . Will, at . . $676,"

Newlin v. Freeman, 4 Ired. Eq. 312, June 1846. [315] "she executed it [her will] in pursuance of a deliberate purpose, long entertained by her, with a view to the emancipation of her slaves." See same *v.* same, p. 93, *supra.*

Lindsay v. Pleasants, 4 Ired. Eq. 320, June 1846. Will of David Archer, made in 1835: [322] "that my negro man Bob be free . . to go where and when he pleases at the death or marriage of my beloved wife. . . that . . Bob have the use and profit of ten acres of my land "

State v. Hathcock, 7 Iredell 52, December 1846. "The Jurors . . present, that . . persons, to the number of ten or more, . . in . . one thousand eight hundred and forty-five, . . with sticks, . . did . . riotously . . make a . . disturbance, . . near the dwelling house of . . Shed, proclaiming that . . Shed and his wife Election Ann Shed, were persons of colour, and offering them for sale at auction, and calling them vulgar . . names, . . in a loud voice, . . to the great damage and terror of . . Shed and wife," The defendants were convicted, and a motion in arrest of judgment was overruled.

Held: [54] "the judgment below is erroneous," [53] "nothing but a civil trespass is charged."

State v. Patterson, 7 Iredell 70, December 1846. [71] "the defendant is charged with keeping a . . disorderly house; and . . causing persons, both free and slaves, to frequent it, and there to . . remain, drinking, . . and misbehaving themselves," He was convicted.

State v. Gallimore, 7 Iredell 147, December 1846. "The prisoner was indicted for stealing a negro woman . . [148] was convicted" New trial denied.

Gordon v. Brown, 4 Ired. Eq. 399, December 1846. [402] "The answer states, that . . in 1836 Sarah Gordon, on account of the bad qualities of the negro, sent Harriett to Georgia, and had her sold there

on a credit for $1,000 [in Georgia money], . . states the reason for the sale of Jim to have been, his insubordination and the apprehension, on certain circumstances mentioned, that he designed an escape into Canada or a north-western State. It admits the price to have been $637, which it says was the full value;"

State v. White, 7 Iredell 180, June 1847. Indictment for libel. "The counsel for the defendant in justification offered to prove, that . . for many years before, there was a general report in the neighborhood, . . that the prosecutor had murdered one of his slaves"

State v. Anthony (*a slave*), 7 Iredell 234, June 1847. "The prisoner . . was indicted with a free woman, for robbing Joseph Britt, in the public high-way, of one dollar and other things. When forming a jury . . three of the persons drawn . . were challenged by the Attorney General, because they were related to the owner of the prisoner; . . allowed . . convicted. . . sentence of death was passed," Affirmed.

Ricks v. Battle, 7 Iredell 269, June 1847. "The defendant advertised, that she would hire these negroes on the 5th of January 1846, at the Court House door; . . The terms of hiring were . . read to the persons, . . assembled at the hiring. . . that all persons, who hired negroes, should give bond . . and that they should be well clothed. . . [270] the plaintiff was the highest . . bidder, and the negro woman was knocked off to him; . . but the defendant refused . . to deliver the negro woman, . . witness stated that twelve months before, at the hiring of these negroes . . the defendant told the plaintiff he should never hire any negroes that she had the management of, that he was a cruel man to slaves and that she would be afraid that he would kill them, and that he would not give them enough to eat; . . [271] The Court charged . . that, if the defendant employed Griffin to cry the property . . without informing him, that he was not to cry the bid of the plaintiff . . it was too late, after the negro was knocked off, to say, that he should not have her; . . the plaintiff was entitled to recover nominal damages. . . verdict for the plaintiff." New trial denied.

State v. Miller, 7 Iredell 275, June 1847. "the evidence was, that the prisoner, in the night time, sold . . spirituous liquor to a *negro*, but the witness did not know him, and could not say whether he was a slave or not."

Held: in this state a black person is presumed to be a slave.

State v. George (*a slave*), 7 Iredell 321, June 1847. "The prisoner was separately tried upon an indictment, in which he was charged as principal, and Mary Meadows as accessary before the fact, with the murder of James Meadows. . . [322] a witness for the State . . was . . interrogated . . as to the acts and declarations of Mary Meadows, tending to show hostility to her husband, and an intention to cause some great bodily injury to be inflicted upon him. . . admitted . . Evidence was then introduced to show a guilty connexion between the prisoner and Mary Meadows, which it is not thought necessary to repeat. . .

Judgment and appeal." [332] "Judgment reversed, and *venire de novo*." [325] "there was error in the admission of the declarations of Mary Meadows." See same *v.* same, p. 123, *infra*.

Brady v. Parker, 4 Ired. Eq. 430, June 1847. In 1830 Brady purchased a negro girl [431] "at the price of fifty pounds,"

Rippy v. Gant, 4 Ired. Eq. 443, June 1847. [445] "The plaintiff had sold . . Milly to . . Freeland . . his reason was, that he was indebted, occasioned by his manager George, one of his negroes, in clearing too much land, and running too often to the Smith's shop; that Milly was a mulatto, and that he hated mulattoes, and would sell Milly if he did not get $25 for her; much or little, . . she 'should go.' . . [446] he would not sell one of his little blacks. . . his reason [for selling Milly] . . what many men of much sounder minds think a sufficient objection to the owning such property. . . [447] Among the plaintiff's witnesses the only negro trader is . . Hurdle. He states her *then* value [in the spring of 1847] to be $400, but . . [in 1844] she was not worth that sum by $150, . . Trollinger states that in the latter part of '43, he purchased negro girls and boys from nine to ten years of age at $200, but that they were worth $225; and that in the same year he was called on to value a great many negroes, preparatory to dividing them, among those entitled to them, and that negro girls of ten were valued at $225. We think the weight of the testimony is decidedly in favor of $250," in 1844. [Nash, J.]

Thompson v. Ford, 7 Iredell 418, August 1847. In January 1843 the slave Willis was sold to Ford for $600, and Ford [419] "carried the negro to Cabarrus County, . . Shortly afterwards the negro returned to the possession of the plaintiff [in Lincoln County] and he kept him about a month. He was then enticed away, by some person unknown, and carried back to Cabarrus, . . June, 1843, the plaintiff sold the woman Eliza, . . for . . $362,"

Weaver v. Upton, 7 Iredell 458, August 1847. [459] "Weaver and Upton, . . 1840, leased . . a tract of land . . to mine for gold; . . Upton was to work twenty hands, and Weaver four hands,"

Edney v. King, 4 Ired. Eq. 465, August 1847. [467] "Edney had sold . . George for $1200, . . at a sale made by the administrators, he purchased" Nelly [466] "at the price of $362,"

Love v. Raper, 4 Ired. Eq. 475, August 1847. [478] "Raper, . . 1844, made a conditional bargain . . for the purchase of . . a man and his wife and their child, about ten years of age, for . . the large sum of $2,000." [Nash, J.]

State v. Marley (*a slave*), 8 Iredell 48, December 1847. [49] "Upon application to a Justice of the Peace, a warrant was issued against the defendant, for insolence to, and an assault and battery upon a white man. He was adjudged guilty, and sentenced to receive five and twenty stripes. . . his master appealed to the Court of Pleas and Quarter Sessions. . .

being convicted, was sentenced . . to receive the same punishment. His master again appealed to the Superior Court, where he was again tried and convicted; and the judgment being arrested . . the case is brought here upon the appeal of the State."

Held: [51] "under the Act of 1842, the master . . had no right to appeal from the County to the Superior Court,"

Williams v. Avent, 5 Ired. Eq. 47, December 1847. [49] "Henry, . . being unwilling to remove with the intestate [to the west] . . ran-away from him, a short time before his removal, and came in, in a short time thereafter, and went into the possession of" his son-in-law.

Barnawell v. Threadgill, 5 Ired. Eq. 86, December 1847. The bill charges that [88] "the defendants all joined in collecting those eighteen [slaves] . . and in confining them so that they might be safely carried away, and, then, that the two defendants . . carried them out of this State, before the plaintiffs obtained judgment."

Bennehan's Executor v. Norwood, Executor [of Campbell], 5 Ired. Eq. 106, December 1847. "Dr. Umstead . . died in . . 1829, having made his last will . . he gives . . Catlett Campbell and Thomas D. Bennehan . . his executors, 'a negro slave Dicey, and her two children, Emeline and Harriet, in special trust and confidence, . . that my said friends, so soon after my decease, as they shall deem it expedient, shall take the necessary legal steps, to have said slave Dicey and her two children manumitted . . and, in the mean time, . . that the labour of such slaves, and the profits and proceeds thereof, shall enure to the . . benefit of the . . slaves only, . . [107] And . . in case the said trustees should fail in effecting the manumission . . the labour . . and the profits thereof, shall continue to enure to the . . benefit of said slaves and their issue, so long as . . any of them, shall live. . . I devise and bequeath to . . Campbell, and . . Bennehan . . all the . . residue of my estates,' . . at September Term 1829, of Orange Superior Court, [the executors] filed their petition for the emancipation . . and procured a decree to that effect, as to Dicey . . but the Court refused to emancipate the children, . . Campbell died in 1845, having made his last will . . 'I do most earnestly entreat Mr. Bennehan (if in his power) to perform the trust thus confided to us, by our mutual friend; and I give to my executors full power, to release any interest which I may have in said negroes, or their increase, . . to Mr. Bennehan, to enable him to accomplish this purpose, . . or to sell . . them to any other person . . for a nominal price, for the purpose of effecting their freedom, as I do not desire that they should ever be considered any part of my estate.' . . Norwood . . qualified as executor . . The other defendant, . . a creditor of Mr. Campbell, sued . . obtained a judgment, and had his execution levied on the interest of Mr. Campbell in these negroes. . . the estate . . [108] is unable to pay this judgment, without subjecting his interest in the slaves to the execution. The bill charges, that . . the trust survived to the plaintiff's testator, whose executor is now ready . . to carry it into execution. But if the Court should be of opinion, that the trust . . is void, and that . .

Mr. Campbell had any individual property in said slaves, . . that a partition may be decreed between the plaintiff and the estate of Mr. Campbell, to enable the former to perform his duty, in emancipating . . the slaves which may be allotted to him,"

Held: "the trust attempted to be created by . . Dr. Umstead, was void. . . [109] The residuary legatees . . the executors . . took the slaves . . absolutely . . This bequest of Mr. Campbell, is a valid one, as made since . . the Act of 1831,[1] . . Mr. Campbell, however, could not so dispose of his interest in the slaves, as to free them from the claims of his creditors. . . The plaintiff is entitled to have partition of the slaves, . . and he is entitled, under the will of . . Campbell . . to have delivered to him, all . . allotted to his executor, . . which are not needed to discharge the debts of his testator. . . [110] make an equal division . . between the plaintiff, and the . . executor of Campbell, and, from the importance of that division to the negroes, and their equal right to emancipation, as far as it can lawfully be effected, . . the division should be made by lot. . . if [the master in equity] . . should find that any of [Campbell's] . . debts . . will remain unpaid, after applying thereto all the assets of the testator, exclusive of his share of said negroes, the master must further enquire, what balance will remain due . . whether it will require the whole of . . Campbell's half of said slaves, or only a part thereof to be sold . . and, if the latter, the master will designate, by lot, a sufficient number, to be sold for that purpose." [Nash, J.]

Harrison v. Bradley, 5 Ired. Eq. 136, December 1847. In 1829 [137] "the defendant . . was appointed the guardian of the infant [three years old] . . and received her share of the slaves . . namely, a man aged 23 . . a girl 11 years, one 13 years, and a boy 9 years old. . . [142] The hires of the negroes . . barely supported the ward for several years, though they gradually increased, notwithstanding the charges also increased by reason of one of the negro women having a large family of young children, and the expenses of the ward's education." [146] "for about fourteen years . . the negroes . . have yielded above $1500, in hires, and have more than doubled in number."

Rea v. Rhodes, 5 Ired. Eq. 148, December 1847. [156] "A physician says, he attended some of the negroes for two years" [159] "the negroes, as negroes belonging to an estate usually are, were not regularly hired, . . but most of them were worked on the . . plantation, . . [161] such a crowd as usually attends a sale of so many negroes,"

State v. Lane, 8 Iredell 256, June 1848. "The defendant, a free man of colour, was indicted under the act of 1840, ch. 30, for . . carrying . . a pistol, without having obtained a license . . the defendant usually resides in the County of Perquimans, and . . was in the employment of a white man, . . Barker, getting shingles in the County of Pasquotank. Barker also lived in Perquimans, and had hired the defendant to carry the pistol . . to the County of Pasquotank, where they were pursuing their work. . . it was seen in his possession. . . not guilty,"

[1] Act of 1830. Rev. St., ch. 111, sect. 59.

Held: [258] "no error." [257] "Degraded as are these individuals, as a class, by their social position, it is certain, that among them are many, worthy of all confidence, and into whose hands these weapons can be safely trusted, . . He was complying with a contract, he had a right to make," [Nash, J.]

Ward v. Smith, 8 Iredell 296, June 1848. "on a Saturday night, the defendant delivered to the jailor . . in Edentown, a negro boy, and said he was hired by the plaintiff, and that he was a runaway. The jailor . . put him in jail and kept him there, until Monday morning, when upon the application of the plaintiff, he delivered him to him on his paying his prison fees, two dollars."

State v. George (*a slave*), 8 Iredell 324, June 1848. See same *v.* same, p. 119, *supra*. "The prisoner was indicted in the County of Granville . . and upon his affidavit his cause was removed to the County of Person, . . the dead body of James Meadows was found at the draw bars, about eighty yards from his dwelling house, . . [325] September, 1846, . . Seth Meadows, a son of the deceased . . about nine years old when his father was killed; . . [stated] that . . before day-break, he was awakened by the struggles of his father, when he saw three men drag him out of the bed, and take him out of the house . . and he thought that one of the men . . was the prisoner, because he was yellow, was built like him and was about his size. . . The prisoner's counsel then introduced witnesses, who stated that when . . Seth . . was under examination before the jury of inquest, he was asked several times, whether he knew, who took his father out of the house, to which he replied, that he did not. . . that he persisted in this answer, until after the prisoner was arrested the next day, . . [327] The jury returned a verdict of guilty. . . sentence of death pronounced," [330] "no error"

State v. John (*a slave*), 8 Iredell 330, June 1848. "The prisoner was indicted for the murder of Ben Shipman, a slave, . . [331] a negro woman slave, . . Flora . . stated that she was the wife of the prisoner, and had been so for about six years; that the prisoner . . was permitted to keep house, and she was permitted to live with him; . . had frequent quarrels, and sometimes separated and came together again; that, some three or four days before the homicide, the prisoner, complaining that his dinner was not properly prepared, got angry, and gave her a whipping, and turned her out of his house, saying that she should not live with him any longer; that she then went to live with her mother; that about 10 o'clock of the night of the homicide, . . the prisoner came to her mother's house and told her [Flora] . . that he intended to kill Ben . . the first time he saw him, that at the request of her mother, she and her sister . . went to the house of Ben . . about ten steps distant . . which they found open with a good fire-light in it; . . they . . commenced sewing; that shortly after Ben came in, when she told him of the prisoner's threat . . Ben . . locked [the door] . . the prisoner came to the door and knocked, . . she asked what the person wanted, . . he replied, 'open the door or I will break it down;' that he thereupon did

break it down, . . walked up to the deceased and knocked him down with a piece of iron . . struck [him] . . several times while on the floor; . . [332] Ben died that night . . To show the prisoner's insanity and drunkenness, his counsel called . . slaves Hardy and Dausey. Hardy stated that the prisoner was a house painter, . . was in the habit of talking to himself, . . [333] that . . the night when the homicide was committed . . the prisoner was . . so drunk, that he had to keep himself steady by holding on to the fence; . . seemed to be crazy . . Dausey testified, that . . about 9 o'clock . . he was talking to himself . . he seemed to be much enraged, and said he would have his wife out of Ben's house, . . The prisoner's counsel then proposed to prove that an adulterous intercourse had been carried on for some time . . between the deceased and Flora, . . The Court rejected the evidence. . . then proposed to prove by the declarations of the prisoner, . . that the prisoner was labouring under monomania on the subject of the adultery of his wife with the deceased. The Court . . admitted [the declarations of the prisoner] . . made on the night of the homicide" The jury found him guilty, and sentence of death was pronounced. No error.

McLeod v. Oates, 8 Iredell 387, June 1848. A male slave was sold for $600 in 1839.

Futrell v. Vann, 8 Iredell 402, June 1848. "The plaintiff lived in the County of Northampton. A colored boy . . was bound to him for a term of years, . . Before the expiration of the term . . the plaintiff sold the unexpired residue to the defendant, who lived in the County of Hertford," [405] "the parties seem to have been fearful, they were doing what the law[1] would not sanction, and therefore it is provided, that if the boy did not serve out his full term, the defendant should pay only for the time he did serve. A *locus penitentiae* is therefore provided for the plaintiff." [402] "Before the expiration of the time, for which the boy was indentured, he returned to the possession of the plaintiff. The action is brought to recover compensation for the services of the boy . . for the time [about fourteen months] he was in the actual employment of the defendant. . . [403] verdict for the plaintiff" Judgment thereon affirmed.

Evans v. Lea, 5 Ired. Eq. 169, June 1848. [170] "In the life time of . . Lea [who died in 1844, his son] . . as his father's agent, sold a child of the woman Rachel for $675, and after his death, . . two others at the price of $1016;"

Amis v. Satterfield, 5 Ired. Eq. 173, June 1848. [176] "the plaintiff . . was in the habit of visiting the defendant's house and holding private interviews with the slaves, and through their means had obtained an undue influence over their mistress;"

Plummer v. Brandon, 5 Ired. Eq. 190, June 1848. [192] "when Dr. Scott started for Tennessee, he . . took with him eight or ten valuable negroes."

[1] Act of 1801. Rev. St., ch. 5, sect. 7.

Atkins v. Kron, 5 Ired. Eq. 207, June 1848. See same *v.* same, p. 96, *supra.*

Whitesides v. Twitty, 8 Iredell 431, August 1848. "it was agreed . . that Morris and a son of the plaintiff should go to South Carolina and bring thence into Rutherford a slave and a waggon and team, which Staton had there, and that when brought into this State, Morris should seize them under the executions"

Cantrell v. Pinkney, 8 Iredell 436, August 1848. [437] "The plaintiff was . . an overseer of a public road in Henderson county, and the defendant owned three male slaves, over the age of sixteen and under the age of fifty years, who were assigned by the court of Pleas and Quarter sessions . . to work [on] said road . . The defendant was duly notified to send said slaves . . for four days each, which he failed . . to do; . . The defendant alleged that he was a citizen of South Carolina . . But he has a place of residence in Henderson county, which he . . occupies . . June, July, August and September. The slaves, who failed to work on said road, are servants, whom he brings with him . . and takes back on his return . . [438] judgment . . against the defendant for twelve dollars,"

Held: "he comes within the letter of our 'act concerning the public roads,'[1] . . and we can perceive nothing in its spirit to exempt him."

Parham v. Blackwelder, 8 Iredell 446, August 1848. Action of trespass. "a negro man, who belonged to the defendant, went with her wagon and team to the land of the plaintiff, and cut and hauled away a load of wood . . and carried it to the defendant's yard."

Judgment for the plaintiff, reversed: a master is not responsible for a trespass committed by his slave, which he did not order or sanction subsequently.

Smith v. Davis, 8 Iredell 508, August 1848. In 1827 the plaintiff "came into possession of the woman, . . claiming her as her own for the term of her life, until . . 1844. The other negroes were the children of Nelly, born in the possession of the plaintiff, . . At the latter period the defendant took the negroes . . and carried them to Mississippi. . . [509] verdict and judgment for the plaintiff for the value of the negroes for her life," Affirmed.

Robards v. McLean, 8 Iredell 522, August 1848. The plaintiff, a resident of McDowell County, [523] "having gone into Granville County, took with him a negro slave, his property, . . Reuben. When about to return home, Reuben complained of being unwell, and was left in the care of Dr. Robards . . An agent was afterwards sent by the plaintiff for Reuben, who . . directed him to get ready to return home the next day. That night Reuben left . . and went to Hillsboro', near which place he was permitted by the defendant's agent, to take a seat in the stage, belonging to the defendant . . to Greensborough, whence he made his escape . . One ground of defence was, that the plaintiff had given

[1] *Ibid.,* ch. 104.

. . Reuben a written permit to return home alone, . . Gibbony . . testified, that he resided . . on the direct rout, which Reuben would have to pass, on his return home . . that Reuben . . presented him a paper, which, after reading, he returned to Reuben, . . the paper writing was directed to him . . [524] requesting him, if Reuben's mule should give out, he would furnish him with a horse, and let him have ten dollars, . . and also to give him any other assistance he might require, . . verdict . . for the defendant," New trial denied. Affirmed.

Kirkpatrick v. Rogers, 6 Ired. Eq. 130, August 1848. Will of Anna Boyce: [131] "Item the 2d. I . . bequeath to my nephew, Hugh Kirkpatrick, my negroes, Mose and Nelly, and also to him my Glass plantation, the proceeds of which are to go to the support of Mose and Nelly, during their lives, and, at their death it is to become said Hugh Kirkpatrick's, for his trouble in taking care of said negroes. I also allow the said Mose a horse called Buck, and a cow and calf, also a plough and harness to work the Glass plantation, and to Mose and Nelly one year's provisions to be paid by my executors, and to Nelly all the beds she claims in Iredell as her own, and all the kitchen furniture she has there. 6th. I will that my negroes, not otherwise mentioned in this will, be valued by three disinterested men, at one fifth less than would be considered the rating price of such negroes; and the negroes have the liberty of choosing their masters, and, if the persons chosen should not be willing to take them, at valuation, that the negroes have the liberty of choosing until they get one, and Lucy's family is not to be separated, nor the negroes taken out of the county. The funds of this valuation are to remain in the hands of my executors, and by them kept on interest, to be annually divided between the negroes so valued, for their own use. As each one of these negroes, so valued, arrives at the age of forty-five, they are to receive from my executors, what would be their equal share of the principal; if any of the negroes die, their share is to be given to those living. Also I will to my boys Anderson and Jo one bed each, with complete clothing and plain bedstead. All the balance of my beds and furniture, except what may herein be disposed of, I will to my negro girl Lucy and her children. 8th. I will that all the balance of my property, not herein disposed of, be sold by my executors, and, after my debts are paid, the proceeds of the sale be divided into three divisions; . . [132] the remaining third . . to be held by my executors for my negroes Anderson, Jo, Lucy, and her children, and to be subject to the same regulations, as I have laid down in a foregoing clause relative to the proceeds of the valuation of said negroes; and to be used in the same way."

Held: [133] "the bequest contained in the 2nd item, is not void, but, that, under it, the plaintiff takes the Glass plantation, as a present devise in fee, charged with the maintenance of the two old negroes Mose and Nelly, who are also given to him—and that the provision 'the proceeds of which are to go to their support,' if not void, is merely directory. By the laws of this State, provision is made, whereby owners of slaves are compelled to furnish every slave, who has become superannuated and

unable to work, with the usual allowance of clothing, food and lodging.[1] . . [134] The benevolent testatrix . . was, therefore, not only in the performance of a high moral duty, in providing for the future maintenance of these two old and, no doubt, faithful slaves, but she is doing what the law would have compelled her estate to perform. As to the 6th clause, we are of opinion, that the bequests in it are void, and that a trust resulted, which, under the 8th clause, either passes, as therein directed, or to the next of kin. The first part of the clause is void for uncertainty. . . they are not confined to any particular persons, but have the whole country to select from. If their choice had been limited to the relations of the testatrix or to a certain number of designated persons, as it was a bequest intended for the benefit of such persons, it would have been supported, but it is too indefinite and uncertain. The bequest in the latter part of the 6th clause is void, because of the incapacity of slaves to take. It was certainly not the intention of the testatrix to free her slaves—for she expressly provided for their having masters, by directing a sale of them—and, as slaves, they are incapable of taking any thing devised to them for their maintenance. . . [135] As to the slaves [except Mose and Nelly], the testatrix died intestate, and they pass to the next of kin. . . [136] The bequests to Mose and Nelly and the other negroes are all void," [Nash, J.]

Lemmond v. Peoples, 6 Ired. Eq. 137, August 1848. In 1844 "William Query conveyed to the defendants a negro woman, named Linny, and her child, Mary, about six years old. The consideration . . was $600. Soon afterwards . . 12 acres, for the consideration, as expressed, of $36. Both deeds are absolute . . 1846, Query died intestate, and the plaintiffs administered on his estate, . . 1847, filed this bill. . . [138] charges, that the purpose of the parties was to effect the emancipation of the negroes and give them a home on the land, . . the defendants admit, that the deeds were made without any valuable consideration; . . unsolicited by them, and were accepted at the earnest request of the intestate. . . the woman was a mulatto, and had been brought up by the intestate and was regarded by him with great affection: that, for several years, a free negro, . . McAlpin, lived with her at the intestate's as his wife, . . and he . . permitted McAlpin to build a house on his land and raise crops, . . which was the place subsequently conveyed to the defendants. The defendants deny, that it was any part of the object of the bill of sale, that Linny and her children should be liberated, or sent to a free State; and say that it was designed by the deceased, that the property should be vested in them absolutely and without condition. . . that he believed that, at his death, she and her family would fall into the hands of his relatives and would be separated, . . that the defendants, . . [139] during the life of the intestate, permitted the man to occupy the land, and, for a small consideration, hired his wife to him . . until a short time before the bill was filed, when, in order to prevent the plaintiffs from getting them, the defendants took her and her children, including two born after the deed, into their own possession. . . that they

[1] Rev. St., ch. 89, sect. 19.

claim the property in the slaves, to be appropriated in any manner they think proper, and that no part of the wishes of the donor extended to the children;"

Held: [142] "There could scarcely be a plainer case of *quasi* emancipation, in violation and fraud of the law;" [139] "as it cannot be executed as intended and is unlawful, . . there is a trust for the original owner, and those who succeed him." [Ruffin, C. J.]

Cresswell v. Emberson, 6 Ired. Eq. 151, August 1848. "In . . 1831 Adam Moore [of Iredell County] made his will, . . directs, that, after the death of his wife, his boy, George Washington, shall be emancipated. The defendant, Emberson, was . . one of the executors. Mrs. Moore died, and . . by her will, gave to . . Cresswell, the boy Washington, to be emancipated, as soon as the laws will permit; that the defendant, after the death of Mrs. Moore, sold . . Washington, as the property of his testator, . . [152] the executors of A. Moore . . obtained an order from the County Court to sell Stephen, but as the deficiency [of assets to pay debts] was not large, and the negro was willed to Mrs. Moore for her life, at her request, instead of selling him, they hired him out for the purpose of paying the debts." [154] "It turned out . . that the hire of Stephen was not required to pay the debts"

Held: [153] "the direction given for [Washington's] . . emancipation was void, as contrary to law, but Mrs. Moore's interest in him was not thereby enlarged. . . [154] Washington . . upon her death, passed either to the next of kin of Adam Moore, or sunk [*sic*] into the residuum, if there was one. . . The latest case on the subject, and we hope it will be the last, is that of Lemond [*sic*] *v.* Peoples,[1] decided at this term. . . the widow was entitled . . to both" Stephen and his hire. [Nash, J.]

McCorkle v. Sherrill, 6 Ired. Eq. 173, August 1848. Will, 1844, [174] "directed the whole of his negroes to be valued, and not sold,"

Twidy v. Saunderson, 9 Iredell 5, December 1848. On January 1, 1847, the plaintiff [6] "hired to the defendant a negro man for the year . . the defendant was not to risk the slave on water or to carry him out of the County of Tyrrell; that, at the same time and place, many other slaves were hired by other persons and the same terms were . . agreed upon . . during . . 1847, the defendant hired the slave to . . Spruil, who carried him to the County of Martin, where the negro was killed. The defendant offered in evidence a note under seal, . . 'I promise to pay . . one hundred and thirty dollars, the slave is hired on the same terms as other slaves,' . . His Honor admitted the [parol] evidence. . . [7] The jury found for the plaintiff and assessed the damage at $832 56." Judgment thereon affirmed.

Duffy v. Murrill, 9 Iredell 46, December 1848. Nash, J.: [47] "Much the most valuable portion of the personal property . . of this State, consists of slaves, who, by artful and designing men having or pretending a claim of right, can be induced to leave the possession of the

[1] P. 127, *supra*.

proprietor and go into that of his opponent. To such a case the common law remedy by replevin could not apply, . . [48] the Act of 1836[1] was intended . . to apply it, when, by the common law, it could not be used."

Roulhac v. White, 9 Iredell 63, December 1848. Action "for fraud in the sale of a slave, . . The plaintiff purchased the slave . . in January, 1842, and he died in the following Fall, of consumption. . . Dr. Barron . . saw Jack in the Fall of 1841, that his appearance . . indicated . . that his health was bad. . . Jack said, he then had a sharp pain in his breast, and from the sickly appearance of his skin, and his hurried respiration, the witness had no doubt he was then laboring under the incipient stages of consumption. Dr. Armstead and Mr. Capeheart also saw the negro in the Fall or Winter of 1841, . . and testified to the declarations of Jack, as to his *then* situation." Objection to the admission of the evidence of Jack's declarations, overruled. Verdict for the plaintiff. New trial denied.

Judgment affirmed: [65] "his Honor was correct in admitting, as evidence, the declarations of the slave as to the state of his health, at the time they were made. . . [66] The Act . . upon the subject of persons of color being witnesses against white persons, does not apply." [Nash, J.]

Horne v. Horne, 9 Iredell 99, December 1848. [100] "he had 16 or 17 slaves: That one of them [Hannah] had great influence over him: . . [101] that he lived [in South Carolina] in a very uncomfortable way among his negroes, without any white family, having never married: that his farm was small and poor, and his slaves were so unproductive as to render it necessary for him to borrow money, . . proposed to . . Worley, . . to bring his slaves to Mrs. Worley's, work them upon the farm, . . but . . Worley declined . . saying, that his negroes were unmanageable, and he did not wish to have any thing to do with them."

State v. Williams, 9 Iredell 140, December 1848. [141] "on the 3rd day of April, 1848, the slave [Jim] ran away from the owner, Cobb, who lived in Wayne County, about nine miles from Goldsboro', where the prisoner lived, and there was a depot . . that . . 23rd of April . . the prisoner took passage to Wilmington and entered one of the cars, and two negro men also entered another car, in which negroes were generally transported, and . . the prisoner paid his own fare and that of the two negroes . . the prisoner, who was then unknown to the collector of the Port, took passage on board a steamer . . to Charleston for himself and two negro men, and signed a manifest, describing them, in the name of 'John Williamson:' that . . [142] the steamer would arrive at Charleston in time for a passenger to reach Hamburg on the rail road . . in the night of the 24th of April: and that on the 25th of April, 1848, the prisoner sold . . Jim and another negro to . . Trowbridge in Hamburg, the prisoner then calling himself 'John Smith:' and that in October following, suspecting that the negroes had been improperly carried

[1] Rev. St., ch. 101.

away, Trowbridge brought them back to Wayne, and Cobb claimed Jim . . [144] The prisoner was convicted"

Held: [148] "that slaves cannot be reckoned among lost things, and that a runaway is, therefore, as much a subject of larceny, as any other slave;"

Cully v. Lovick Jones, 9 Iredell 168, December 1848. "an action of trespass *vi et armis*, for false imprisonment. . . By the will of Jane Thompson, . . Reuben Jones, her executor, 'was directed to obtain the freedom of Phebe, if practicable, on account of her meritorious services.' . . Jones filed a petition in the County Court . . Whereupon it was ordered . . at November term, 1846 [1806], 'that . . Jones have license to liberate . . Phebe, he first giving bond and security as required by law.' . . after that date Phebe was permitted . . to act as a free person, . . and her children . . up to a short time before this action was brought in 1846, . . Jones neglected to give the bond . . until . . 1816 . . [169] The plaintiff . . was a child of Phebe, born in . . 1808,"

Judgment for the plaintiff, affirmed: "admiting [*sic*] that the sovereign . . might insist that the act of emancipation was not valid, because of the omission to give the bond, we are clearly of opinion, that . . Jones . . whose duty it was to give the bond, [can not] take advantage of that omission;" "and no one claiming . . through him, can . . much less a mere wrong doer, after . . so many years. . . After so long an acquiescence, almost any thing will be presumed, in order to give effect to the act of emancipation." [Pearson, J.]

Hardy v. Skinner, 9 Iredell 191, December 1848. [192] "deed . . 1841 . . conveys . . 400 acres of land, whereon the maker then lived, 11 slaves,"

Barnes v. Farmer, 9 Iredell 202, December 1848. "a suit [commenced September 1846] to recover ['certain' bequeathed] damages for harboring a slave. . . slave had belonged to . . Farmer, and had been sold under execution in 1835, and purchased by the plaintiff; that he took the . . slave into possession, and, immediately thereafter, he absconded and remained out until January, 1845. The witnesses . . testified to various acts of harboring, from shortly after the . . slave ran off, until the Fall of 1842, such as seeing him on the plantation of the defendants, at and about their house and out houses—seeing caves and a shelter on their lands, and one near their house, having the appearance of being used, as places of concealment by some one; and one witness . . had seen the slave at a camp on the land of the defendants, in company with the defendant, William, while he was out, and . . William then spoke of him as a runaway. . . [203] verdict for the plaintiff."

Judgment thereon reversed and *venire de novo*: the action was barred by the statute of limitations.

Howell v. Howell, 5 Ired. Eq. 258, December 1848. [259] "If the defendants take the negroes and sell them, there is a clear and adequate remedy at law . . [260] the damages, which the plaintiff seems to apprehend, cannot . . be considered 'irreparable,' as in the case of orna-

mental shade trees, the value of which cannot be measured by dollars and cents; or a mine, the value of which cannot be known." [Pearson, J.]

McGuire v. Evans, 5 Ired. Eq. 269, December 1848. [270] "he gives to his wife for life . . Bill (shoe-maker) and Tibby" [273] "question was made at the Bar, as to the maintainance [*sic*] of the aged negro Tibby. . . it is one which arises exclusively between two of the defendants,"

Yarbrough v. Arrington, 5 Ired. Eq. 291, December 1848. "In 1840, . . Yarbrough removed to . . Arkansas, and carried the negroes with him."

Harris v. Philpot, 5 Ired. Eq. 324, December 1848. Will, 1842: [326] "it is my desire that my daughter . . have three small negroes more,"

Doggett v. Hogan, 5 Ired. Eq. 340, December 1848. [342] "he executed a mortgage for the slaves, sold to him, about fifty in number;" [346] "the execution was levied on twenty three negroes, . . and at the sale . . Hogan purchased all but three, at . . $8770. . . Jacob, bid off . . at . . $700," A boy was purchased for $150.

Barnes v. Simms, 5 Ired. Eq. 392, December 1848. Will: [393] "it is my desire that the negroes . . shall work on the tract of land that I gave her for the support of her and her children; and if the negroes don't make a support, rent out the land and hire out the negroes. I also reserve two negroes to wait upon her;"

Graham v. Little, 5 Ired. Eq. 407, December 1848. [409] "the testator was largely indebted when he died [in 1829], . . that there were about 60 or 70 slaves, and that a considerable number of them were sold for the purpose of raising money to be applied to the discharge of the debts, and that it would have required all of them, or nearly all of them, . . to satisfy all the debts: and that . . it was thought most proper to sell such parts of the land as were unproductive and thus save some of the slaves (which were productive and increasing)"

Held: [411] "the debts must be paid . . by the personal estate as the primary fund,"

Meredith v. Anders, 9 Iredell 329, June 1849. [330] "The lessor of the plaintiff claims under the will of Elizabeth Locke . . 'For the love and affection which I have for James Meredith, and to enable him to take care of my two old negroes, Ben and Rachel, who, I wish to remain where I now live and support themselves, I give [to him] . . the land whereon I now live, . . containing two hundred acres, . . Should . . Meredith find it necessary for his own convenience and the good of the neighborhood to remove said negroes to his own house, I wish him to do so.' . . The Court . . charged, that the land was devised to the lessor of the plaintiff, and not to the two negroes, nor in trust for them."

Judgment for the plaintiff, affirmed.

State v. Stewart, 9 Iredell 342, June 1849. "The prisoner was indicted for murder, . . [343] the prisoner and Penny Anderson had lived

together for several years, as man and wife, although not married: . . October 1848, . . During the night, blows were heard and much lamentation, . . in the direction of the prisoner's house, and the cries were in the voice of a female. . . In about six weeks afterwards, her body was found, partially buried . . some five hundred yards from the house of the prisoner. . . many marks of violence, . . The prisoner was of a black complexion. He had lived in the neighborhood about ten years, and . . passed for, and was treated as, a free negro; . . The jury found the prisoner guilty of murder. . . Several of the State's witnesses were mulattoes." [345] "Another ground, upon which a new trial was asked, was, that the prisoner, being *black*, was *prima facie* a slave, and, if a slave, the Court had committed error, in not admonishing the mulatto witnesses, as required by law.[1] This point was not made till after the trial"

[346] No error: [345] "If the prisoner wished to be tried as a slave, the question should have been started 'in time.' . . It would be trifling with the administration of justice, to allow a prisoner to pass himself off as a free negro, and take his chances for a verdict; and then turn around and insist that he was a slave." [Pearson, J.]

State v. Robbins, 9 Iredell 356, June 1849. [357] "a licensed retailer of spirituous liquor" was convicted of selling one pint to a slave "in the night time."

State v. Dempsey, 9 Iredell 384, June 1849. "The defendant was indicted as a free man of color for carrying arms without a license. On behalf of the State a witness deposed, . . that he . . heard Barnacastle [a very old man, now deceased] say, that . . the paternal great-grandfather of the defendant, who was called Joseph Dempsey, . . was a coal black negro. . . defendant objected; but the Court received it. The defendant then gave evidence, that the mother of Joseph . . [385] was a white woman, and that said Joseph was a reddish copper colored man, with curly red hair and blue eyes: that . . Joseph's wife was a white woman, and that they had a son, named William: that . . William also married a white woman, and had . . a son . . Whitmel: and that . . Whitmel married a white woman, and they are the parents of the defendant."

Held: "the defendant . . was in the fourth generation from negro ancestors, and therefore within the prohibition of the Statute."[2] [388] "the term 'free person of color' in the Act of 1840, and in that of 1823, . . is to be understood in our law, at this day, to be a person descended from a negro within the fourth degree inclusive, although an ancestor in each intervening generation was white." [Ruffin, C. J.]

State v. Caesar (a slave), 9 Iredell 391, June 1849. Caesar was indicted for the murder of Mizell. [392] "on his trial, . . Brickhouse . . stated, that . . the 14th of August, 1848 . . the deceased and he . . were both intoxicated: . . went to bed . . he was awoke by the deceased,

[1] Rev. St., ch. 111, sect. 51.
[2] Act of 1840, ch. 30.

who proposed that they should . . walk out: that . . each took a drink . . that near a store house . . they found two negro men lying on the ground: . . was not acquainted with either of them, . . [393] witness informed the prisoner and Dick, that he and the deceased were patrollers, and he . . took up a piece of board and gave the prisoner and Dick each two or three slight blows: . . [394] Dick stated, that he . . thought it was done in sport . . Brickhouse then asked [Dick] . . if he could not get some girls for them, . . that he had money a plenty; witness declined doing so: . . Charles came up: Brickhouse asked Charles, if he knew they were patrollers, and took hold of Charles and ordered witness [Dick] to go and get a whip to whip Charles with: witness moved off a few steps . . Brickhouse then began to beat the witness with his fist and struck several blows on the head and in the side of witness, which hurt him, and he begged Brickhouse to quit. . . Charles stated . . [395] the prisoner . . remarked . . that he could not stand that, and run to the fence and got a rail, and . . struck . . Brickhouse on the head: the rail broke in two pieces, . . the prisoner then struck Mizell . . and felled him to the ground . . then ran off." Mizell died the next morning. [396] "The prisoner . . was employed in getting timber. . . was obedient to white persons, . . [397] The Court charged the jury, . . [398] The blows inflicted by Brickhouse . . were . . nothing more than ordinary assaults and batteries; and . . would not amount to such legal provocation as would extenuate the killing of a free white man by the slave from murder to manslaughter, however worthless and degraded the white man might be. The jury . . found the prisoner guilty [of murder], . . After sentence of death, the prisoner appealed"

Judgment reversed and new trial granted: [405] "He [Caesar] used force enough to release his associate and they made their escape without a *repetition* of the *blow*. Does this show he has the heart of a murderer? On the contrary, are we not forced . . [406] to admire, even in a slave, the generosity, which incurs danger to save a friend?" [Pearson, J.] Nash, J., concurred: [407] "it was not an ordinary assault and battery. . . [409] By the common law, the prisoner's offence would clearly be mitigated to manslaughter . . I fully admit, that the degraded state of our slaves requires laws different from those applicable to white men, but I see no authority in the Courts of justice, to make the alteration." Ruffin, C. J., dissented: [421] "Negroes—at least the great mass of them—born with deference to the white man, take the most contumelious language without answering again, and generally submit tamely to his buffets, although unlawful and unmerited. Such are the habits of the country. It is not now the question, whether these things are naturally right and proper to exist. They do exist actually, legally, and inveterately. Indeed, they are inseparable from the state of slavery; and are only to be deemed wrong upon the admission that slavery is fundamentally wrong. . . [423] it is an incontestable fact, that the great mass of slaves—nearly all of them—are the least turbulent of all men; that, when sober, they never attack a white man; and seldom, very seldom, exhibit any temper . . at even gross . . injuries from white men. They

sometimes deliberately murder; oftener at the instigation of others, than on their own motive. They sometimes kill each other in heat of blood, being sensible to the dishonor in their own caste of crouching in submission to one of themselves. That, however, is much less frequent than among whites; . . [424] Crowds of negroes in public places are often dispersed with blows by white men, and no one remembers a homicide of a white man on such occasions. . . In the course of nearly forty-two years of personal experience in the profession . . I have not . . heard of half a dozen instances of killing or attempting to kill a white man by a negro in a scuffle, although the batteries on them by whites have been without number, and often without cause or excessive. Desperate runaways sometimes resist apprehension by a resort to deadly weapons. But . . negro slaves can hardly be said to be at all sensible to the provocation of an assault from a white man, as an incentive to spill blood. . . [427] dangerous . . to hold the doctrine, that negro slaves may assume to themselves the judgment as to the right . . [428] of resistance . . to the authority . . by the whites, . . First denying their general subordination to the whites, it may be apprehended that they will end in denouncing the injustice of slavery itself, and, upon that pretext, band together to throw off their common bondage entirely."

State v. Robert Hildreth, 9 Iredell 429, June 1849. [430] " 1848, he was . . engaged in stacking fodder with his father, [and] a negro man, and a younger brother . . his father and the negro were throwing up fodder to him; . . [432] about four or five weeks before the homicide, the prisoner told a witness, the deceased was in the habit of watching his house to catch him trading with slaves, . . [433] witness [stated] . . That David . . asked him, if he ever heard Taylor say, that a negro saw him . . and his father lying in the road drunk: to which the witness replied, that he had heard the deceased say something like it—upon which David said, 'I will go over and beat old Bill Taylor nearly to death:' "

State v. David Hildreth, 9 Iredell 440, June 1849. See State *v.* Robert Hildreth, *supra*. " Edmund Taylor, stated, that, as soon as his father made the exclamation, that he was killed, he, the witness, . . seized a fence rail to strike Robert, and that the negro man took it from him. . . [441] if the jury should believe that the prisoner made use of the words, 'hush, or I will whip you both,' . . [442] with the intention of discouraging . . Edmund Taylor and the negro from interfering,"

State v. Henry (*a slave*), 9 Iredell 463, June 1849. Indictment for burglary. " in January, 1849 : . about four o'clock in the morning, he [McNatt] was awoke . . 'your mother's plantation is on fire:' . . [464] and started to his mother's, distant two miles, . . he found the family asleep: . . no fire . . [465] after her husband left, [Mrs. McNatt] . . pushed to the front door, but did not fasten it, and in . . ten or fifteen minutes . . a negro opened the door, . . 'haven't you got some money here; if you don't give it to me I will kill you;' that she . . said . . 'if I give you my husband's tin trunk, that contains his pocket

book and all his papers, will you spare me?' and the negro said, 'may be so:' . . and he took it off; . . she swore to . . [the prisoner's] identity . . White . . testified, that, the Tuesday night before . . he heard the prisoner and one Barlow, a white man, in conversation: . . [466] Barlow said . . 'you must break open Jimmy McNatt's house and get his money,' to which the prisoner made no reply: That the prisoner told Barlow to let him have two gallons of whiskey: That Barlow let him have them, and . . said, 'if you don't do what you promised, I will kill you.' It was contended for the prisoner, that there was no such breaking as would constitute a burglary, . . The Court charged, that if the prisoner made the outcry . . for the purpose of decoying McNatt out of the house, . . it would be . . constructive breaking," He was found guilty, and a new trial was refused.

Judgment reversed and a *venire de novo* awarded: [468] "the entry was not *immediate*. Fifteen minutes expired, during which there was ample opportunity, to replace the fastening." [Pearson, J.] Nash, J., concurred: [472] "I am utterly opposed to these constructive burglaries;" Ruffin, C. J., dissented.

State v. Howell, 9 Iredell 485, June 1849. "the prisoner and the deceased, both men of color, lived with their families in the same house. A quarrel took place . . [486] The prisoner [in the yard] threatened to go into the house and whip the deceased, . . was stopped . . the deceased came out and walked off in a different direction from where the prisoner stood, and observed to him, if he wanted the house he could take it. . . had gotten about fifty yards, when the prisoner swore he would whip him any how, and started after him. . . the prisoner approaching him, with his arm raised in a striking position. . . the deceased struck the prisoner, who immediately returned the blow, and the deceased fell and died in a short time. . . a deep wound in the breast . . The jury found the prisoner guilty of murder; a motion for a new trial . . refused and judgment pronounced," No error.

State v. Long, 9 Iredell 488, June 1849. "a proceeding under the bastardy Act. . . The defendant . . moved the Court to dismiss the proceedings, for the reason that Lucinda Simpson was a woman of mixed blood, within the fourth degree, and therefore incompetent to give testimony against a white man. . . The Court . . quashed the proceedings." Affirmed.

Blackwell v. Overby, 6 Ired. Eq. 38, June 1849. [39] "The plaintiff, being quite a poor man, was unable to procure any laborers [in the gold mine of which he had a lease] besides himself . . After some time, however, it was agreed between him and [the Overbys] . . that the two latter should, each, furnish a slave to work under the plaintiff, and that the three should divide the nett gains equally: and under that agreement the plaintiff collected ore . . perhaps about $100."

Powell v. Powell, 6 Ired. Eq. 50, June 1849. Will, executed in 1842: [51] "1st: It is my will . . that my executors . . dispose of such of my property . . as they may think best . . to pay my debts. 2nd: I give

unto my son . . two negro men, . . valued at eight hundred dollars each; a woman . . and her two children, . . valued at twelve hundred dollars, and their increase . . unto my daughter . . one negro man, . . valued at eight hundred dollars; one girl, . . valued at six hundred dollars; a woman, . . and her three children, . . valued at fourteen hundred and fifty-nine dollars; and their increase" [53] "The executors have sold the land and applied the proceeds . . to the payment of the debts. . . [54] a large amount received for the hire of the negroes . . has been applied to pay the debts"

Held: "the will makes the land a *primary* fund for the payment of debts, at the discretion of the executors, which has been properly exercised by selling the land to save the negroes." [Pearson, J.]

Gray v. Armistead, 6 Ired. Eq. 74, June 1849. In 1841 the administrator "sold a negro boy . . and took his note with two sureties for the price $736, payable . . six months after date,"

Ingram v. Smith, 6 Ired. Eq. 97, June 1849. "a woman, aged 17 years, and her three female children—one of the age of six years; another, four; and the youngest, about one" were sold in 1824 for $711.36.

Held: [102] "the price paid, if not the full value, was about it"

Scarborough v. Tunnell, 6 Ired. Eq. 103, June 1849. [105] "The defendant . . admits, that he shot the plaintiff's slave, but says that it was upon a just cause . . and that the plaintiff, though excited at first, readily became satisfied with the defendant's conduct upon that occasion,"

State v. Goode, 10 Iredell 49, August 1849. Nash, J.: [51] "As the law stood, upon the passage of the act of 1814, the paternity of a bastard child was . . fixed by the examination of the woman; so much so, that, if the child, when born, should prove to be black, the defendant had no redress in a Court of law,"

McNeeley v. Hart, 10 Iredell 63, August 1849. "he had agreed with the defendant to work in the crop [corn and oats] with him in 1844, . . that he kept a hand in the crop during the year, and he, himself, left the country."

Sherrill v. Shuford, 10 Iredell 200, August 1849. "removed to Tennessee, taking . . several negroes,"

Graham v. Davidson, 10 Iredell 245, August 1849. [246] "1843, the plaintiff requested his grandmother, Mrs. Byers, to allow him to sell Cato; and that Mrs. Byers . . said, 'no; and if you are tired of Cato, send him home'"

Call v. Ellis, 10 Iredell 250, August 1849. [252] "Ellis proposed [in 1841] . . that he . . would hire the [plaintiff's] negro Louisa at the rate of $5 per month, until her hire amounted to enough to pay him what he should advance for the plaintiff."

Craige v. Craige, 6 Ired. Eq. 191, August 1849. "a negro woman . . purchased [on a credit] at the price of three hundred dollars, a boy . . purchased . . for the sum of four hundred and seventy five dollars,"

Alexander v. Alexander, 6 Ired. Eq. 229, August 1849. Will, 1841: "that my land and negroes . . be put to sale, . . out of the proceeds . . that all my just debts be paid,"

Trexler v. Miller, 6 Ired. Eq. 248, August 1849. Will, 1848: [249] "to his daughter Polly a legacy in money, instead of negroes, as she did not wish to have negroes." Codicil, 1845 [*sic*]: "if my wife should be . . delivered of a child, that child shall have a negro girl named Creecy,"

Houston v. Smith, 6 Ired. Eq. 264, August 1849. "In . . 1827, . . Houston, sold to the defendant a negro girl, 17 years of age, for . . three hundred and fifty dollars, for . . the life of the defendant, who . . executed a penal bond in the sum of three hundred and fifty dollars, with condition, that . . if the defendant . . should remove the [negro girl and her issue] . . out of the county, . . Houston should take immediate possession, as though the defendant was dead. In . . 1844, the defendant executed a bill of sale to . . Grier for the said girl and her five children, for the life of the defendant, . . Grier . . carried the slaves to South Carolina, whereupon . . Samuel and James Davis, agents of . . Houston, seized the negroes, alleging that the life estate was forfeited, brought them back to this State, and afterwards sent them to . . Houston, in . . Mississippi. The defendant brought an action of trover against . . Samuel and James Davis, and, . . 1847, recovered judgment . . for . . eleven hundred and twenty dollars, the value of her life estate. . . [266] The prayer is, that the defendant be perpetually injoined from collecting . . The defendant admits that she executed the bill of sale . . but avers that she did so, because she was apprehensive, that the plaintiffs would . . run them out of the State, as . . Houston had done on a former occasion. She denies any assent, expectation or belief . . that he [Grier] would take the negroes out of the State."

Bill dismissed: [269] "the plaintiffs, if any injury has been sustained, have, by the penal bond of $350, as full redress as they stipulated, for the price of $350 for a life estate in a negro girl of 17 years of age was exorbitant."

Kelly v. Bryan, 6 Ired. Eq. 283, August 1849. [285] "they allowed their sister to keep Ember [[288] 'the best blacksmith'] and retain his wages in the black smith's shop, for the support of herself and family, from . . 1841 until 1846, when Alfred was substituted for Ember, who was sold for $500, which was applied to the plaintiff's debts;"

Beasley v. Downey, 10 Iredell 284, December 1849. "assumpsit for the hire of a negro from November 1840, to March 1843, during which time, and for some years before, the negro had been in . . Mississippi under the . . management . . of the defendant [as the plaintiff's agent]."

Johnson v. Chambers, 10 Iredell 287, December 1849. [289] "both Johnson and Chambers were intoxicated, . . that Chambers, to whom the house belonged, had reserved two rooms in it, in one of which some negroes belonging to him lodged, . . that, before he [witness] left the house, he found that Johnson had gone into the room among the negroes, . . and that he made him come out;"

Anderson v. Doak, 10 Iredell 295, December 1849. "1841, . . Weatherly moved from this state to . . Virginia, and took the slave Harper with him, . . [296] 1846, . . [Harper] committed some alleged offence and ranaway from . . Virginia, and returned to the County of Guilford in this State, where the . . sheriff . . seized the said slave . . by virtue of an attachment . . against . . Weatherly,"

Edwards v. Bennett, 10 Iredell 361, December 1849. "The petitioner alleges, that he is the owner of one half of certain slaves [[362] 'aged about thirty Judy, Eliza aged three years old, Harrison aged about eleven months old'], a tenant in common . . and prays for a decree of sale in order to effect a division."

[364] "the plaintiff declared to be entitled to partition. And as it does not appear, whether there is a necessity for a sale . . for the purpose of making partition, . . remit the cause, so that the partition made [*sic*] be made under the direction of the Court below." [Pearson, J.]

McRae v. Keller, 10 Iredell 398, December 1849. "an action . . to recover a penalty given by Statute for trading with a slave; . . [399] '1847, did sell . . to . . a slave, . . spirituous liquors, without the permission in writing or otherwise, from his master or manager, so to do.' . . judgment [for the plaintiff.]" Affirmed.

Herring v. Railroad Co., 10 Iredell 402, December 1849. An action "to recover damages . . for negligent management of their cars, . . Sunday in . . August 1845, . . afternoon, a train . . was passing . . 15 or 20 miles an hour, when the wheels . . passed over one of the plaintiff's slaves and killed him instantly, and badly injured the hand of another. . . [403] the slaves were asleep at the time, . . on the bed of the road or just outside of it, . . the plaintiff owned the plantation . . on both sides of the road. . . [405] verdict for the defendants." New trial denied.

Affirmed: [408] "as the negroes were reasonable beings, endowed with intelligence, as well as the instinct of self preservation and the power of locomotion, it was a natural . . supposition, that they would get out of the way, and the engineer was not guilty of negligence, . . [409] No fault is imputable to the owner for not preventing his negroes from going about on Sunday and lying down where they please," [Pearson, J.]

Houston v. Bogle, 10 Iredell 496, December 1849. [499] "1831, . . Davidson conveys to his son . . negro Hannah and her two children . . for . . $450, that being the value . . [500] Lucy . . given . . in exchange . . was worth as much as Hannah and her two children. . . [501] Davidson . . stated that his father retained twenty-two negroes,

. . was called upon to give the names of them; he mentioned nineteen by name and stated that there were others, whose names he could not recollect."

Hansley v. Hansley, 10 Iredell 506, December 1849. "a suit . . for a divorce *a vinculo matrimonii,* . . and for alimony. [508] 'her husband not only abandoned her bed entirely, and bedded with . . negro Lucy, but he deprived the petitioner of the control of all those domestic duties . . which belong to a wife, and placed . . Lucy in the full possession . . and insulted the petitioner by . . repeatedly ordering her to give place to the . . negro, and saying that the petitioner was an incumbrance, and encouraged . . Lucy to treat her also: . . that often he would, at night, compel the petitioner to sleep in bed with . . Lucy, when he would treat . . Lucy as his wife, he occupying the same bed with the petitioner and . . Lucy: . . that she, at length, abandoned the residence of her husband' . . [509] the plaintiff offered evidence, . . [510] that, in conversations respecting this suit, the defendant said, that he would spend everything he had in defending it, except . . Lucy and his [and Lucy's] child; . . a brother of the petitioner . . said to the [defendant] . . if he would sell Lucy he did not know what the petitioner might do as to living with him again, and that the defendant replied . . that he would part with all the property he had before he would with . . Lucy and his child, and that the petitioner might stay where she was." [509] "jury . . found . . that the defendant did separate . . from the petitioner and live in adultery with . . Lucy: . . [510] There was a decree for a divorce *a vinculo matrimonii,* and for the costs against the defendant: and an inquiry was directed as to the settlement . . proper to make on the petitioner;"

Held: [516] "the decree was erroneous," [512] "there is no allegation of any adultery by him after" "the petitioner left her husband's house," Upon the allegations of the petition, [513] "and upon such parts of the finding of the jury, as are consistent with them, the wife would be entitled to a decree for separation and alimony. . . a divorce *a mensa et thoro.* . . [514] From the evidence respecting the child, about whom the petition would hardly have been silent, if it had been born when it was filed, and from the findings of the jury, it may be presumed, that in fact the criminal and disgraceful connection . . did continue after the petitioner left him. If so, it is unfortunate that it should have been omitted in framing the petition." [Ruffin, C. J.]

State v. Boyce, 10 Iredell 536, December 1849. Indictment for keeping a disorderly house. [537] "A witness stated, that at Christmas 1845 he went to a negro quarter on the defendant's plantation [in Perquimans County], . . about 200 yards from his dwelling house, and . . found a quilting going on and dancing by negroes; . . a daughter of the defendant was there . . and some of the negroes did not belong there . . Roberts deposed, that on Christmas night 1846, he and other patrollers went to the defendant's plantation between 8 and 9 o'clock: . . much noise . . went to the negro quarter first and found several negroes

dancing . . then went to the house in which Boyce lived, and found therein twelve or fifteen negroes, of whom one was fiddling, and the others dancing and talking loud; . . some . . acted as if they were drunk, and he smelt spirits: that Boyce was in the house, and . . [538] a neighboring white man named Hollowell, a brother . . and a married daughter of the defendant and her husband . . and several children of the defendant, who lived with him and were enjoying themselves in the dance with the negroes: that several . . did not belong to Boyce, but they all had papers to go to Boyce's, and yet were whipped by the patrol, except the fiddler, who had been sent there by one of the patrol: that when the patrol seized the negroes to whip them, Goodwin, the defendant's son-in-law, had high words, and got into a fight with the patrol, but the defendant did not interfere. . . the defendant resided in a very private situation, not being within a mile of any public road. And another of the patrol stated, that they bursted open the door and were in the house before the defendant knew they were on the land: that they immediately began to tie the negroes, when Goodwin remarked to Roberts, that a person who would act as he was doing, was no better than a negro: and that brought on a fight between them. On the part of the defendant, Hollowell stated, that [they] . . were sitting quietly in conversation, when the patrol broke into the house: that all the negroes belonged to the defendant except four, . . those four had belonged to him and came there by the permission of their owners to pay a Christmas visit to their old master, and their parents and relations, who belonged to the defendant: . . they had no spirits, and made but little noise: that the defendant permitted the negroes to come into the house to dance one reel, for the amusement of his children and visitors, and there was no disorder: . . [539] The Court instructed the jury, that, . . if they found . . that the defendant had upon two or three occasions suffered white persons and negroes, of both sexes, to meet together at his house and fiddle and dance together, and get drunk and make a noise, so as to disturb the public, they should find the defendant guilty; . . The jury accordingly found the defendant guilty, and after sentence he appealed."

Judgment reversed and a *venire de novo*: [540] "It would really be a source of regret, if contrary to common custom it were to be denied to slaves, in the intervals between their toils, to indulge in mirthful pastimes, . . [541] But it is, clearly, not so. . . We may let them make the most of their idle hours, and may well make allowances for the noisy out-pourings of glad hearts, which providence bestows as a blessing on corporeal vigor united to a vacant mind. . . [542] There was nothing contrary to morals or law in all that . . unless it be that one feel aggrieved, that these poor people should for a short space be happy at finding the authority of the master give place to his benignity, and at being freed from care . . Then, as to the ingredient, . . that some of the white people also joined in their dance. . . there is much question as to the truth . . But, supposing it to be so, . . though it be not according to the custom of this part of the country, there is nothing in it forbidden by law . . and it is very possible, that the children of the family might

in Christmas times, without the least impropriety, countenance the festivities of the old servants of the family by witnessing, and even mingling in them." [Ruffin, C. J.]

Mooney v. Evans, 6 Ired. Eq. 363, December 1849. [364] "The testator [Kelly] gives to his wife, the slaves Billy and Tibby, during her life, and at her death . . to the executor, Mr. Evans, 'in trust for the . . benefit of Benjamin Rush.' . . Bill afterwards died and Tibby was stricken with palsy; she is old; there is no longer hope of her recovery; . . Mrs. Kelly is also dead. . . [365] Evans [trustee for Rush, 'who is an infant'] . . declines accepting."

Held: "It is . . the duty of the executor . . out of such part of the estate as remains in his hands . . to see that she [Tibby] is comfortably provided for, so as to prevent her from being chargeable to the County."

Alston v. Batchelor, 6 Ired. Eq. 368, December 1849. Dolly Alston, [369] "with a view to prevent a sale of the negroes, took up a note,"

Freeman v. Cook, 6 Ired. Eq. 373, December 1849. [374] "soon after he [the husband] took possession of the slaves, they were seized by officers, under executions against the husband, and sold to pay his debts. They were purchased by different persons, and some of them were carried out of the State,"

Thompson v. Newlin, 6 Ired, Eq. 380, December 1849. "Cause removed from the Court of Equity of Orange County, . . 1846. . . [381] Sarah Freeman . . had some real estate, about thirty slaves, and . . seven or eight thousand dollars; and by her will, dated . . 1835, she devised a piece of land to her husband during his life; and the remainder therein and all her other land, her negroes, . . and every other part of her estate . . to . . Newlin, . . her executor. She died in 1839, . . will . . contested by her husband, and heirs, and next of kin; . . established . . 1843 [1841].[1] In August following this bill was filed [2] by her next of kin . . prays a discovery of those [secret] trusts, . . The answer of Newlin admits, that the bequest of the slaves to him was not to his own use: and states, that the testatrix wished them to be emancipated and gave them to him in trust, that he should have them emancipated according to law. . . frequently had consultations together . . and at one time she had determined to manumit and send them out of the State, but afterwards abandoned that purpose with the view, that the defendant should have it done after her death. . . [382] at no time intended . . that they should remain here, . . that the testatrix preferred not to express the said trust in her will, but to confide in the defendant . . to take the necessary steps . . which he . . promised her to do; . . that the testatrix seemed to prefer Liberia as their place of destination; but . . left to the defendant's discretion the place, and also the manner of transporting . . he would long ago have [executed the trusts] . . by sending the negroes out of this State, if he had not been prevented by the continued litigation . . and that it is still his purpose . . to do so under

[1] Newlin *v.* Freeman, p. 93, *supra.*
[2] See same *v.* same, p. 110, *supra.*

the direction of the Court. He denies, that there was . . an understanding between the testatrix and himself to violate . . the law, by holding the negroes in a state of qualified slavery. . . that the devises and bequests of the other parts of the estate were upon the trusts . . to defray the expenses of removing the slaves and make some provision for them; and in part to compensate the defendant"

Held: [384] "the trusts disclosed . . are not unlawful. They are, indeed, in accordance with the policy plainly appearing in the act of 1830;[1] which, moreover, always prevailed here, provided only the emancipated slaves were carried, and kept, without our borders. . . [385] the trust . . is lawful and proper to be executed by procuring . . the emancipation in the manner prescribed by the Statute . . and the defendant is allowed one year . . to effect the same." [Ruffin, C. J.] Nash, J., concurred; Pearson, J., dissented.

[391] "*Per Curiam.* Decree for the emancipation of the slaves upon the defendant's complying with the requisitions of the law." See same *v.* same, p. 163, *infra.*

Lockhart v. Bell, 6 Ired. Eq. 398, December 1849. Will, 1839: [401] "It is my will . . that, if the fund set apart for the payment of my debts, . . and the sales of all the perishable estate, shall not be sufficient, then my executors shall sell such of my slaves as shall be necessary:"

Nelson v. Nelson, 6 Ired. Eq. 409, December 1849. Nelson's will, 1843: [410] "To my daughter Elizabeth one negro woman, Leah and her baby, . . her youngest child living, . . And if there should be any increase from . . Leah, I want that equally divided, between my three daughters . . some to buy and pay the others, as I do not wish any sold out of the family." While a suit was pending, [412] "the executor hired out such of the negroes as would bring wages, and for the maintenance of some he was obliged to pay. . . Between the making of the will and the death of the testator [about three months after], . . Leah . . bore no other child; but she hath since had three;" [416] "the expense of maintaining . . Leah, and her family is stated to have been $329 75;"

Held: "as to the construction of the clause disposing of any increase Leah should have, . . that the testator meant . . only such issue as the woman might thereafter have in his lifetime. . . [417] It is difficult to suppose that . . a father . . could mean, that she [Elizabeth] should be at all the expense of providing for the mother during her pregnancies and confinements . . and yet give away two thirds of the offspring—almost the only profit"

McKay v. Simpson, 6 Ired. Eq. 452, December 1849. "In May 1846, the plaintiff sold to the defendant a negro boy for . . $350, . . with a warranty of . . soundness, 'execpt a small rupture'; . . [453] The defendant . . alleges, that . . the plaintiff cheated him . . by inserting the exception . . without his knowledge, and because the rupture is in fact a large and serious one, greatly impairing the value of the slave."

[1] Rev. St., ch. 101.

Hailes v. Ingram, 6 Ired. Eq. 477, December 1849. [481] "the legatee for life, and the person, apparently entitled to the contingent limitation, joined in the sale [in 1834] of a slave [[477] 'a negro boy, . . for $550,'] . . because they wanted money to build a new mill and to support the other negroes, which was a charge on the legatee for life, . . The interest of the estate did not call for the sale of a negro as there was perishable property—the debts did not exceed twenty five dollars,"

Biles v. Holmes, 11 Iredell 16, June 1850. "an action . . in which the plaintiff claims damages for an injury to his slave . . [17] the defendants had hired from the plaintiff his slave Green, to work at the mine . . at Gold Hill; . . at the bottom of a shaft about one hundred and eighty feet deep, from which the defendants were taking gold ore; . . in the bottom of the buckets was an aperture four inches square, over which was a valve . . [18] January 1848, as one of the buckets commenced descending, . . the '*lander*' of the defendants, dropped into it four iron drills, each weighing five pounds, which instantly passed through the aperture . . and one of them struck Green on the head, and fractured his skull, which made the operation of trepanning necessary, and a large piece of the skull bone was cut out. . . Green and a white man were then working there together: . . there was no valve in the bucket, . . Another witness . . was asked, if Green did not complain much of head-ache, when exposed to the sun, and if Green did not state his inability to work in the sun, or to work in any laborious employment. The declarations of the . . slave . . were excluded by the court. . . [19] verdict in favor of the defendants. . . New trial refused"

Judgment reversed: [21] "There must be a *venire de novo*." [20] "there was manifestly a want of ordinary care. . . to show . . that [the slave] . . was permanently injured . . it was competent to prove . . of what he complained. . . [21] The statute, excluding the testimony of a slave or free person of color against a white man, has no application. . . The actions, looks and barking of a dog are admissible . . upon a question as to his madness." [Pearson, J.]

State v. Haithcock, 11 Iredell 32, June 1850. "a free negro, was charged by a white woman with being the father of her bastard child."

Held: [33] "Free negroes . . are bound to support their bastard children, whether begotten on a free white woman or free black woman. They can set up no 'exclusive privilege' in this behalf." [Pearson, J.]

Cooke v. Beale, 11 Iredell 36, June 1850. [37] "guardian of some minor children . . removed into Virginia, near the line, and took with him a part of the slaves belonging to his wards, and kept them in his own service and hired out the remainder in this State,"

Held: the court which appointed him had the right to remove him.

Burney v. Galloway, 11 Iredell 53, June 1850. "I promise to pay . . one hundred and sixty dollars, for the hire of a negro . . and the use of two full crops of boxes on Moore's Creek. . . 1848." [54] "it is not stated . . when the hire of the negro was to begin, . . the phrase

'crops of boxes,' means as many pine trees, prepared for making turpentine, as one hand will attend during a season."

Satterfield v. Smith, 11 Iredell 60, June 1850. Action " for a breach of a contract of hiring. . . a paper writing, purporting to contain the terms of hiring, one of which was, that the negro should not be employed at a fishery or sent by water . . was read aloud by the crier, before the hiring commenced. . . that after the paper was read, . . the crier said in a loud voice, ' the negro can be sent by water or put at a fishery at the risk of the hirer.' . . [61] The defendant employed the negro at a fishery; but there was no evidence of any damage. . . the plaintiff could not recover."

Small v. Eason, 11 Iredell 94, June 1850. " he was willing his hands should . . work on the road to the width of twenty feet, but that they should not work outside thereof,"

State v. Britton, 11 Iredell 110, June 1850. [111] " Harrell sometimes threatened to sell these negroes; at other times, he spoke of them as belonging to his wife [for life], and expressed a wish to sell them, if his wife would agree to it, as he thought it was hard he should have to raise negroes for other persons."

Meadows v. Meadows, 11 Iredell 148, June 1850. " When this son . . was about ten years old, the father purchased a negro boy, and declared he intended him for his said son, . . [149] After he [the son] became eighteen years old, the father allowed the son to take the earnings of the negro . . and when he married, he . . carried the negro with him . . 1841, for some fault, he sold the boy for $700; "

State, ex rel. Fanshaw, v. Jones, 11 Iredell 154, June 1850. Will of Henry Britt, of Currituck County, who died in 1836: " The girl Mary Ann, which was picked up or found at my door, is to remain with my wife Polly, until she arrives at the age of twenty-one; and then it is my will, that she be and enjoy all the benefits of a free person of color." About 1829 Wilson of Currituck County had [155] " sold to . . Willis, a female slave, named Milly, who was pregnant. Willis . . was a negro-trader. The woman ran away from Willis in Currituck, and in some short time . . came to the house of a widow lady, . . a short distance from Britt's, bringing . . a female infant, perfectly naked and apparently not more than a day old. The lady told the woman, that she and her child would die if they continued in that condition, exposed in the woods, and advised her to go to her owner. . . in two or three days afterwards, a mulatto female infant was found at the door of Britt's house, who is the girl Mary Ann. But the lady did not see the infant in any short time, and therefore did not know her to be the same, which . . Milly brought . . but . . Mary Ann is a bright mulatto and bears a family resemblance to . . Milly. Britt and his wife had no children, and took the found child into the house with them, brought her up tenderly, and became much attached to her. About four years afterwards, Willis returned . . and claimed Mary Ann, . . and demanded her from Britt. But the latter refused to give her up . . did not claim her as a slave, and believed she

was not, but that she was the offspring of a white woman and a colored man." Since Britt's death, Mary Ann has lived with Jones, the administrator with the will annexed of Britt. [154] "The relator is the administrator of the testator's widow, who dissented from her husband's will. . . [156] the Court instructed the jury, . . If they should find that her mother was free, that their verdict should be for the defendants. But, if . . the child . . of . . slave mother, so as thereby to be, herself, a slave, . . the possession of Britt . . was insufficient to vest the property in him, unless . . he claimed a property in her; . . From a verdict and judgment against him the relator appealed."

Judgment reversed and a *venire de novo*: [157] "the possession for more than three years bars the action of the owner under the act of 1715: and then the act of 1820,[1] . . is, that the person, so in possession, . . shall be deemed to have a good . . title . . as against all persons so barred . . a slave must belong to some one, and as no one can recover from the possessor, such slave must be deemed . . the absolute property of the possessor." [Ruffin, C. J.]

Irions v. Cook, 11 Iredell 203, June 1850. Letter to Jones of Tennessee: [205] "Louisburg, N. C., . . 1846. . . I stopped . . at my brother's in Georgia, . . I have bought you a blacksmith. They tell me he is a good one. He is about 25 years old. If you will take him, you can get him for $800: and if you don't want him, my brother will take him at that price."

Ruffin v. Mebane, 6 Ired. Eq. 507, June 1850. [508] "December 1838, . . Mebane . . and . . Williams, entered into an agreement under seal . . Mebane was to furnish $4000 and Williams was to buy negroes for, and in the name of, Mebane, . . and to resell the negroes to the best advantage; and . . to be allowed one half of the nett profits, . . until January 1840. . . January 1840, the parties settled in full, and agreed to continue . . until . . January 1841. . . again settled . . and agreed to continue . . until . . January 1842. . . March 1842, the parties again settled . . and agreed to continue . . until . . January 1843. . . Mebane was a man of large estate, . . and Williams was a man possessed of no visible estate. . . September 1841, the plaintiff sold to Williams as the agent of . . Mebane, a negro man, for . . $525, . . he afterwards sold him . . Williams had been openly acting as the agent of Mebane for several years, . . in buying and selling negroes, . . [509] Williams . . became insolvent, and left the County, largely in [Mebane's] . . debt."

Reed v. Cox, 6 Ired. Eq. 511, June 1850. "the uncle of the plaintiff, 'publicly proclaimed that that boy Nelson was the playmate of his nephew, . . and if . . the creditors . . would allow him, . . at some small sum, to purchase the boy, he . . would make a present of him to his nephew,' . . [512] did purchase him for $50, he being worth $150,"

Hicks v. Forrest, 6 Ired. Eq. 528, June 1850. Before 1840 a "negro boy" was sold for $1,050 cash.

[1] Rev. St., ch. 65, sect. 18.

Smith v. Wiseman, 6 Ired. Eq. 540, June 1850. Will: [541] "I leave with my daughter-in-law, . . my negro Ambrose, to work for her and Ebenezer's four children's support, until the youngest one arrives at the age of seventeen, then to be sold, and the money to be equally divided amongst them all,"

Turner v. Faucett, 6 Ired. Eq. 549, June 1850. [550] "Crane was indebted to him . . about $225, for the hire of two negro men, blacksmiths, for the year 1842:"

Armstrong v. Baker, 6 Ired. Eq. 553, June 1850. Will: [554] "sell such of the property as can be best spared and with the proceeds buy a trusty negro fellow, who is skilful in the management of a farm and repairing implements of husbandry."

Tate v. Dalton, 6 Ired. Eq. 562, June 1850. "The estate [in 1822] . . consisted of a negro man, named Dick, and other chattels to the value of about $100. Administration was granted to . . Dalton, who married a daughter of the intestate; and he made a sale, at which he purchased . . Dick, at . . $206. . . [564] his value at the time," [562] "several others of the children [of the intestate] were present at the sale, and were competitors . . in bidding . . but the defendant, owning the negro's wife, was willing to give more . . The intestate had also a claim to another negro, . . [563] 1830, . . a recovery was effected of the negro and also . . $800 for his hires; and the defendant then sold the negro for $334 25."

Francis v. Welch, 11 Iredell 215, August 1850. "trover for a horse, . . Love owned a slave, and permitted him to purchase a horse and use it as his own. After the death of Love, his executors delivered the slave to . . Prather, to whom he had been bequeathed . . and Prather sold . . him to the . . plaintiff. . . the slave . . took the horse with him; but, after some time, the plaintiff objected to having the horse kept there, and the slave then put him into the possession of his son, who belonged to the defendant, and kept the horse on the defendant's plantation as his own—the defendant not assuming any control over the horse. Afterwards . . the plaintiff borrowed the horse from the defendant's negro to drive to an adjoining County, and, on his return, he locked him up in his stable for the night. The next morning the horse was gone, and afterwards he was seen in the possession . . of the defendant's slave on his plantation for a few days, and until, in the absence of the defendant . . [216] the said slave sold the horse. . . the plaintiff submitted to a nonsuit and appealed."

Judgment affirmed: "There is no ground whatever for the action."

Jones v. Abernathy, 11 Iredell 280, August 1850. [281] "William Barry, of Fairfield District, South Carolina, by his will, . . proved there in 1823, gave several slaves . . to his wife . . during her life. . . 'after her death, my will is, that my negroes, Jub, Lid, Isaac, etc., be all emancipated, and continue under the care of . . trustees. . . that all my lands adjoining where I now live, with all the stock and plantation tools thereon,

do continue in the care . . of said trustees, for the benefit and support of said Jub, Lid and their increase forever. . . all the balance of my estate, after my wife's death, . . to Cynthia Jones,' . . his wife . . died . . During her life, the defendant had some of the slaves in his possession in this State, and then . . sold them beyond the limits of the State. For doing so this action is brought, in order to recover damages, alleged to have arisen thereupon to Cynthia Jones, . . the plaintiff . . suffered a nonsuit"

Judgment affirmed: [282] "although we know that slavery is established in South Carolina, yet, without evidence, it cannot be judicially assumed here, that a bequest for emancipation is not valid there; since a power . . to manumit is not so absolutely incompatible with slavery, that they cannot co-exist under the same government; and, in fact, such a power . . has been tolerated in most countries and in the States of this Union, in which that institution prevails. But, if that were otherwise, still the right of this residuary legatee would not be a legal, but an equitable one." [Ruffin, C. J.]

White v. Gibson, 11 Iredell 283, August 1850. "The copartnership . . was entered into for the purchase and sale of negroes, horses, cotton and tobacco—"

Henry v. Wilson, 11 Iredell 285, August 1850. Sarah McIntyre's will, 1815: [286] "I give to my niece, Elizabeth Henry, the services of my servant Amy, during her life, . . Amy to be liberated at her death, according to the laws of the State, provided . . Amy is well treated, but, if . . she is not well treated, I allow my executor to take her and liberate her, or put her in the hands of some person, who will treat her well; . . I do hereby . . empower my executor to be the sole judge of the treatment, that . . Amy may receive" The executor, Cannon, "put the negro in the possession of the plaintiff, who retained the possession of her and her children until 1843, when . . Cannon was about to file a bill in equity against the plaintiff, upon the ground that she intended to remove the negroes out of the State. . . the parties agreed to constitute the defendant their mutual agent . . that he would hold them during the life of the plaintiff and hire them out annually . . and pay the proceeds . . to the plaintiff, and, at her death, deliver them to . . Cannon. . . In 1845, the plaintiff demanded the negroes . . [287] judgment . . in her favor," Reversed, and judgment entered for the defendant.

Featherston v. Featherston, 11 Iredell 317, August 1850. [318] "1844, . . a division of the negroes took place, and . . a negro boy named John, aged about three years, fell in a lot to William Featherston, after which [he] . . traded him to M. C. Featherston [his sister?] for two hundred dollars . . the amount that the said boy was valued at" M. C. Featherston, the plaintiff, "lived with her mother . . and her mother owned the mother of John; . . the defendant [William Featherston] in some way got possession of him, some two years after the trade."

Foster v. Woodfin, 11 Iredell 339, August 1850. [340] "The plaintiff produced the bill of sale to his wife, dated . . 1835, . . It purported to have been made in consideration of $400[1] . . no money was paid" The vendor deposed that the slave "Lucinda was then about six years old, and . . was intended as a gift to his daughter [the plaintiff's wife], and that she was not taken away by the daughter, but left by her to wait upon her mother[2] . . who was then sickly: . . 1843 . . the plaintiff hired her to . . a son of the witness, who lived with him, . . during that year, the sheriff came to his house with executions . . [341] to levy on that slave and the others, and they were kept out of the way there about a week, and then Lucinda went into the possession of the plaintiff, who also kept her out of the way of the sheriff, and held her until she was taken under the executions in 1847, and that during that period she had the two children."

Brown v. Brown, 7 Ired. Eq. 30, August 1850. Will: "to enable my son . . [31] to build the house and kitchen . . I will him my negro man Primus and a wagon and four horses for . . ten years"

Kirkpatrick v. Rogers, 7 Ired. Eq. 44, August 1850. See same *v.* same, p. 126, *supra.*

Blanton v. Morrow, 7 Ired. Eq. 47, August 1850. "the sheriff of Cleaveland County . . offered for sale [in 1848] . . 'Morrow's interest in the . . fourteen negroes, . . [48] men, women and children.'" [47] "no one of the negroes was present, but eight of them were in South Carolina or in Rutherford County, and the others were in the possession of different persons in Cleaveland, to whom they had been hired by the tenant for life;"

Held: the sale was invalid.

Currie v. Swindall, 11 Iredell 361, December 1850. "an action . . to recover . . one hundred dollars, which . . the defendant had offered [November 1848] to give any one, who would apprehend and commit to prison, a certain person of color, named Chavis, charged with homicide. . . [362] the jailor . . proved, that the plaintiff came to his house on the Saturday night before the trial [spring term, 1849] . . and told him he wished him to go to the jail: that he . . found there Chavis and a man . . with him: . . Chavis was not confined in any way, and upon the jailor's opening the door, the plaintiff told Chavis to go in, which he . . did. . . Chavis was in the employment of the plaintiff, at the time of the homicide." [365] "the man after his acquittal went to work with the plaintiff," Verdict for the plaintiff; new trial denied.

Venire de novo: [364] "The testimony of the jailor . . did not exclude the idea, that he had surrendered himself of his own accord."

Simpson v. King, 11 Iredell 377, December 1850. Will of Letitia Foster, admitted to probate in 1837: "My girl Maria, after my death,

[1] [343] "large price" [Ruffin, C. J.].
[2] [347] "as a nurse—a very poor one truly" [Ruffin, C. J.].

I do not leave her as a bond slave to any person, I wish her to live among my children or otherwise, if she sees proper. I leave John Simpson to act as trustee for said girl. . . I . . bequeath twenty-five dollars to Maria."

Held: [379] "The trust is clearly unlawful," "the legal title is given to Simpson." [Pearson, J.]

Wilder v. Creecy, 11 Iredell 421, December 1850. "trover for a negro slave, Alfred, . . Fenill [[422] 'as the highest bidder at a public hiring'] hired the slave from the plaintiff for the year 1846, and one of the terms . . was, that the negro 'should not go by water.' Fenill placed this and other slaves for the year under the charge of . . Carter . . at a place . . on Albemarle Sound, and, in . . December . . the defendants, Creecy and Pool, hired Alfred and some other slaves from Carter to assist in . . [422] delivering some corn . . on board a vessel lying at anchor, about three or four hundred yards from the shore. . . the other defendant, Gregory, . . by the consent of Carter, sent Alfred on board . . to assist in stowing away the corn in the hold, and he . . went on shore at night. The next day he returned . . and worked . . until evening; when the Captain . . stated to Carter, that he thought there was about to be a storm, and said that he would go aboard, and send Alfred ashore, but Carter told him he need not send the boy ashore, as he might be of service in case a storm should come on. . . during its continuance the slave died from fright or cold, or their combined effects."

Held: [423] "The stipulation . . was . . merely an engagement of the hirer . . it was personal merely, and did not attach to the slave, in the nature of a covenant running with land." [Ruffin, C. J.]

Griffin v. Richardson, 11 Iredell 439, December 1850. In 1843 a female slave was sold at public auction for $625.

Caffey v. Rankin, 11 Iredell 449, December 1850. "a petition filed [by the administrator with the will annexed of James Davis, and by the administratrix with the will annexed of Sophia Davis] . . 1848 . . for permission to emancipate a negro boy, named Alvis, and other slaves named. . . [450] 1837, James Davis died, having first made [in 1831] [1] . . his last will . . 'One negro girl named Nelly, and one mulatto [man] named Nehemiah [[453] "husband and wife"], I give . . to my wife [Sophia] . . during her natural life or widowhood, then to my son, Michael C. Davis, . . except Nelly and Nehemiah are to be free, if they can comply with the requisition of the law of this State; and if they cannot . . and Michael . . should die, without any heirs of his [own] body, Nehemiah and Nelly may choose their own homes, where they like to live, and is to be sold privately at the valuation of two men:' . . between the making of the will . . and his death [1837], . . Nelly had one child named Wright, which was sold by . . Sophia as executrix . . [453] 'at public auction to Michael C. Davis for $150, [Wright being] then an infant some 12 months old, . . Michael afterwards sold to . . Sophia the . . slave, Wright, for $150 . . after the death of James

[1] See Caffey *v.* Davis, 1 Jones Eq. 1.

Davis, the negro woman Nelly had the other child Alvis:'" [450] "Michael C. Davis . . is dead, leaving an only child, . . James C. Davis, of whom . . Rankin is guardian." Will of Sophia Davis, who died in 1848: [451] "I . . bequeath to my grandson, James C. Davis, . . one negro boy named Wright, and one negro boy named Alvis, on condition if Nehemiah and Nelly, their father and mother, comply with the laws of this State and go free, it is my will they should go with them, and not be kept back on account of their age, and if not, . . Wright and Alvis, must stay with their father and mother, and not be hired out: and if not, they must have the same chance of their father and mother in choosing homes, and be sold to the same person at the valuation of the same two men, that value their father and mother, . . It is my will they never shall be parted from their parents [, for I do not believe in negro slavery; but if I had it in my power, I would set them all free[1]]." The petition further sets forth, "that Nehemiah is about . . forty-five, Nelly about forty, Wright about twelve, and Alvis about nine . . that the petitioners are desirous to emancipate all four . . but that . . Rankin . . objects . . so far as regards . . Alvis.[2] . . and the petitioners . . are ready . . to give the bonds and security required by law," At the spring term, 1850, the superior court of law of Guilford County decreed [453] "that the petitioners may emancipate . . Nehemiah, Nelly and Wright, . . when they shall enter into bonds . . payable to the State . . in the sum of one thousand dollars for each of the said slaves, . . conditioned that the . . slaves shall . . correctly demean themselves while they shall remain within the State . . and that they . . will, within ninety days . . leave the State . . and never afterwards come within the same. And . . that the petitioners . . did not have the right . . to emancipate . . Alvis, . . [454] the petitioners . . obtained an appeal"

Appeal dismissed: [455] "these questions cannot be settled in an *ex parte* proceeding." See Caffey *v.* Davis, p. 178, *infra.*

State v. Cherry, 11 Iredell 475, December 1850. "the prosecutor was a constable and had in his hands an execution against the defendant, under which he seised [*sic*] a negro belonging to the defendant. Whereupon, the defendant, . . within carrying distance of the pistol, presented the same at the prosecutor, remarking . . 'If you do not turn the negro loose I will shoot you,' by which the prosecutor was put in fear. The prosecutor did not turn the negro loose, and the defendant immediately lowered the pistol and went away."

State v. Tilghman, 11 Iredell 513, December 1850. [519] "she and deceased then had some talk about the disposition of his property after his death, when they concluded it would be better to sell the land and keep the negroes; . . [532] negro servants . . had access to the jury room. The servants entered for the purpose of carrying food and clothing to the jurors,"

[1] Caffey *v.* Davis, 1 Jones Eq. 2, [3] "the will proceeds with a prayer, 'that no one will try to stop her poor negroes;' and again says, 'she wishes to clear her skirts of them.'"

[2] "the increase of a slave, during a life estate, passes over to the remainder man." *Ibid.* 4.

State v. Jowers, 11 Iredell 555, December 1850. "The defendant, a white man, was indicted for an affray with Bob Douglass, a free black man. . . the defendant and Bob got into a quarrel, when the defendant asked Bob, why he had reported . . that he, the defendant, had told a lie, to which Bob replied, because he had told one. Upon this the defendant struck Bob, and a fight ensued, in the course of which, Bob struck the defendant with the butt end of a wagon whip, and the latter knocked him down with the broken limb of a tree. . . The presiding Judge charged, that, though the Courts have held, that insulting language, used by a slave, may justify a white man in striking him, yet the principle did not apply to the case of a free negro, stricken under similar circumstances, by a white man. The defendant was convicted, and judgment being pronounced against him, appealed."

Judgment reversed and a *venire de novo*: [556] "It is unfortunate, that *this third class* exists in our society. . . [557] a free negro has no master to correct him, . . and unless a white man, to whom insolence is given, has a right to put a stop to it, in an extra judicial way, there is no remedy for it. This would be insufferable. Hence we infer from the principles of the common law, that this extra judicial remedy is excusable, provided the words or acts of a free negro be in law insolent." [Pearson, J.]

Smith v. Cameron, 11 Iredell 572, December 1850. Action [573] "to recover from the defendant, who was the plaintiff's overseer, damages for the loss of a negro man, . . Israel, . . The plaintiff owned three fields on the Cape Fear River—two on the west side and one on the east. . . on the west side of the river . . the defendant and the negroes lived; . . the defendant came up the river in his canoe with Israel, . . on his way to his business in floating off logs [from the field on the east side, 'there being . . a very large freshet']. Nardin went with them . . and after working nearly all day, the defendant, still attended by Israel, came down to a raft belonging to a man named Cameron, where he got out . . and directed Israel to carry Nardin . . to his own raft and then return for him. When Israel left Nardin's raft, he crossed directly over to the other side of the river, where the boat got entangled among the bushes, was upset, and Israel was drowned. Israel was about forty . . a stout, active man, a good waterman, and understood the management of boats and canoes, and was acquainted with the river. . . [574] a witness . . stated, that he did not consider that there was any danger, in the main current of the river, . . the other hands, who had been employed in floating off the logs, came down the river in the course that the defendant had pursued . . [575] To return from Nardin's raft to Cameron's did not require the negro to cross the river, both rafts being on the same side, . . about a hundred yards apart. Why he did cross it is not stated"

Judgment for the defendant, affirmed: "We cannot perceive of what negligence the defendant was guilty."

Glover v. Riddick, 11 Iredell 582, December 1850. "the declaration contains three counts: one in trover for the conversion of two slaves . . one for harboring the . . slaves; and one for trading with them. . . In

1843, the plaintiff purchased . . Tony and Armistead, then runaway: They were first seen in 1846 or 1847, in Nansemond County, Virginia, passing as free persons of color, under the names of Jack Douglas and Charles White: they worked for several persons, . . and exhibited certain papers, called free papers, . . they purchased goods out of the defendant's store . . and settled the account of 1846: . . asked him for a certificate of freedom, alleging that they had left their free papers, at some point distant . . [583] the defendant called on . . his Clerk, and one Everitt, for the latter of whom they had worked, to state what they knew about their freedom, and they stated, that they had passed as free persons, . . and that they had seen their papers with the County seal appended: thereupon, the defendant gave them a paper writing . . 'Newtown, November 8th, 1847. The bearer, Jack Douglas a very stout black man, about 35 years old, lives in the neighborhood of my cotton factory, is free and of good character; his partner, Charles White, also a stout black man, (not quite so tall as Jack) about 35 years old, is also free, lives in this neighborhood and is also of good character; they are looking for work. (Signed,) Abram Riddick.' . . Spring of 1848, . . they left, and were apprehended at Weldon by one Scott, in the act of taking the cars; that he committed them to Halifax jail, where they remained six weeks or two months, and from which they were taken by the plaintiff in August, 1848, and carried to Norfolk; that he paid the jail fees, . . forty dollars, and two hundred dollars to the jailor for . . Scott . . a reward he had offered by advertisement . . in 1843. . . The alleged free papers . . turned out to be forgeries. . . Scott did not know of the reward offered, at the time he apprehended the said slaves."

Judgment for the plaintiff reversed and a *venire de novo*: [587] "None of the acts of the defendant . . amount in law to a conversion. . . [588] the plaintiff cannot recover upon the counts for harboring or trading with the slaves." [583] "because it did not appear, that any law existed in Virginia, prohibiting such traffic;"

Reid v. Pass, 11 Iredell 589, December 1850. [590] "1849, . . executor . . filed a petition against the . . next of kin . . for the purpose of selling a parcel of negroes belonging to the estate . . in order to make a division among the next of kin: that a decree was made for the sale and distribution of the proceeds,"

Tarkinton v. Latham, 11 Iredell 596, December 1850. [597] "Tarkinton . . made a parol gift of her to his grand-daughter, the plaintiff, ['for a nurse,'] when she was . . quite small. . . the slave was delivered to the plaintiff, by the grand father's taking the hand of Marina and placing it in the hand of the plaintiff:"

McNair v. McKay, 11 Iredell 602, December 1850. In 1848 a negro man slave was sold for $750.

Heathcock v. Pennington, 11 Iredell 640, December 1850. "the plaintiff hired to the defendant a negro slave between the ages of ten and twelve . . for . . one year . . with permission . . to employ the slave

in driving a horse attached to a whim, at a certain Gold mine, . . [641] January, the slave was put to driving . . about 9 o'clock in the evening, with orders to continue the driving through the night until the next morning, under the directions of a young man, who was about 19 years of age and was employed as a lander, . . That the whim was about ten feet from the mouth of the shaft . . which was 160 feet deep, and at the surface 8 feet long, and 4 feet wide. That the negro boy did not have an overcoat, but was allowed to warm himself at a fire, . . about 2½ feet from the mouth of the shaft: that upon one occasion, when he went to warm, which was just before daylight . . and when it was dark, the lander called to him and directed him to start his horse, and the boy, being drowsy, in attempting to go to his horse fell into the pit and was killed. The defendant . . employed a negro boy of his own, and his son, who were about the same age with the hired boy, in the same service . . [642] verdict for the defendant,"

Judgment affirmed: [643] "the owner must have foreseen those risks . . [645] we understand that this boy took his rest through the day, as it is stated, that in the evening he commenced his duty for the night—there being three of them, who performed the task among them, and probably, by turns. We cannot say that was unreasonable;" [Ruffin, C. J.] Judge Pearson did not dissent, but he states, in 1857:[1] "I thought it amounted to ordinary negligence, to make a boy work at a dangerous position, from 9 o'clock at night, until the next morning, during . . January, and that at least one of the hands should have been a grown person. Boys, are not going to sleep, at allotted hours, in order to prepare themselves for night work, . . besides, Ch. J. Ruffin . . evidently confounds, '*ordinary*' and '*gross*' neglect."

McLeran v. McKethan, 7 Ired. Eq. 70, December 1850. In 1848 a male slave was sold for $649.

Melvin v. Robinson, 7 Ired. Eq. 80, December 1850. [81] "The plaintiff alleges, that an apprentice of his, a slave named Dorsey, was arrested under a charge made by . . Robinson, that he, through the instrumentality of the plaintiff, had enticed from his possession a negro named Riley; and that Mathis . . represented to him, that the charge . . if proved, would take Dorsey's life; and that Robinson was willing to compromise the matter . . if the plaintiff would execute his bond for $400, which he did. . . The answers of the defendants positively deny that . . the bond . . was given for the purpose alleged . . but simply to indemnify . . Robinson, for the loss of his slave, Riley, and the expenses . . in recovering him. . . there was a controversy subsisting between him and . . Sutton, concerning the title to Riley; . . and that, by the inducement of Dorsey, Riley was put into the possession of Sutton. . . [82] Robinson surrendered Dorsey to the Superior Court, to which he was bound over; and that the Prosecuting officer . . caused him to be discharged . . because . . no offence against the law had been perpetrated by him;"

[1] Couch *v.* Jones, 4 Jones N. C. 402 (409).

Hooks v. Lee, 7 Ired. Eq. 83, December 1850. In 1837 Mary Hooks had [87] "Twenty slaves; named, Owen, about 27 years; Pompey, 50 years; Charles, 30; Elijah, 24; Harry, 26; Baltimore, 14; Cader, 10; Henderson, 7; Isaac, 5; Simon, 5; Alvin, 2; Sawney, about one month; Patience, 40; Amoritt, 25; Rane, 24; Teney, 19; Ginny, 10; Margaret, 8; Munny, 3; Martha, 2;" in 1841 she sold Pompey for $340.

Easton v. Easton, 7 Ired. Eq. 98, December 1850. Will, 1843: [99] "my negroes all to be hired out in common, except those given to my wife and also loaned to her, and the hire, and interest of my notes, to go for clothing and educating of my children,"

Downey v. Bullock, 7 Ired. Eq. 102, December 1850. [109] "in 1838, . . the removal of . . Hunt and his family, and of the negroes, forming the most valuable part of the trust fund, to . . Mississippi." They did not remain there, but returned to Granville County.

Harris v. Harris, 7 Ired. Eq. 111, December 1850. In 1838 [112] "the negro woman and one of her children, then six months old, [were sold] to the defendant . . for the price of $700,"

Walton v. Walton, 7 Ired. Eq. 138, December 1850. Walton admitted [141] "that one of the negroes . . was sent to his father's . . and died, having been sent there to be nursed, Robert having no wife."

Hanner v. Winburn, 7 Ired. Eq. 142, December 1850. [144] "John Armfield was engaged in negro trading, and when about to start for the Southern market, Walker was put into his possession by his [Armfield's] father to assist him in the business; . . If he had not had Walker, he would have been obliged to hire either another negro, or a white man, to have performed the service rendered by him, . . [145] John Armfield had his services for ten or twelve years, and it is proved that he was a very valuable slave." [144] "Upon one occasion when [John] . . was offered, in Alabama, a very high price for the negro, he wrote to his father, the intestate, to know if he might sell him, . . the intestate replied, he must not sell him, he would not take any price." The commissioner valued "negro Walker, or . . his hires for ten or twelve years, . . at $1,000."

Stringer v. Burcham, 12 Iredell 41, June 1851. "trespass for false imprisonment . . On the trial . . a record, duly certified by the Clerk of Craven County Court, was introduced, showing that . . 1807, . . a petition was filed at the instance of one William Jessup, . . praying permission to emancipate certain of his slaves for meritorious services, and, amongst others, negro woman Sinah; . . it was decreed . . and bond given . . [42] the plaintiff was the daughter of Hannah, and Hannah was the daughter of Sinah, and was born after the decree of emancipation. . . Sinah and her descendants had always passed for . . free persons of color, since the said act of emancipation, except upon one occasion, a man, calling himself Jessup, and claiming to be the son of William, the petitioner, came to Craven about 1817, and endeavored to carry off

Hannah and one other: that he was arrested . . whereupon he surrendered them and has not been since heard of." [43] "After a period of thirty years, the defendant, without a pretence of right, as far as we are informed, seized upon the plaintiff and questions her right to freedom."

Judgment for the plaintiff, affirmed: "the record is neither irregular nor void, . . After so long an acquiescence by the public in her enjoyment of her freedom, every presumption is to be made in favor of her actual emancipation, especially against a trespasser and wrong-doer—" [Nash, J.]

Pitt v. Albritton, 12 Iredell 74, June 1851. [75] "Pitt . . 1850, brought to the . . sheriff . . the two slaves, and requested him to keep them in the common jail, until he should call for them"

Dickson v. Jordan, 12 Iredell 79, June 1851. Pearson, J.,: [81] "A Doctor is sent for, and attends day and night upon a slave. It would be singular, if the owner when sued for the services, should insist, 'no price was agreed on,' the declaration is upon a '*quantum meruit*,' and I may show, in abatement of the damages, that the slave died, and so the services were of no value."

State v. Presnell, 12 Iredell 103, June 1851. "an indictment for selling spirituous liquor to a slave . . the defendant kept a shop . . on the side of a public road . . December 1849, . . Tapscott and another person came with their wagons . . and stopped for the night in the road; . . Tapscott had with him his slave, Nelson, who drove his wagon. About 8 or 9 o'clock . . the defendant went . . to the shop with three of his neighbors . . Nelson went in and asked . . whether he had spirits for sale, and . . asked for a quart, and the defendant . . received the price . . Tapscott . . stated, that Nelson was a confidential and trusty servant, and for some years had driven his wagon and gone trips to different and distant markets by himself; and that he was usually furnished with money and authorised to provide necessaries, such as provisions . . shoeing the horses, repairing the wagon . . [104] that during the day, on which they got to the defendant's, there was a cold rain, and Nelson had asked him for a dram, and he told him that when he met with any spirits he should have some; that he did not know that Nelson had gone for spirits, but that the next morning Nelson told him he had purchased it and brought him the jug containing it, which belonged to Nelson: and that he and his companion drank some of the spirits, also Nelson and another slave, who was with the other wagon; . . one of his horses was taken sick and he used the residue . . in drenching him, and then or afterwards refunded to the negro what he had paid for the spirits. . . he had never given Nelson any authority to buy spirits for him, . . [105] Verdict and Judgment for the State" Affirmed.

Simpson v. McKay, 12 Iredell 141, June 1851. An action of covenant. "Bladen County, N. C., May 13th, 1846. Received of Hugh Simpson Four Hundred and Fifty Dollars in payment for a negro boy, named Graham, about seventeen years of age; which negro I warrant both as

to soundness and right of property, except a small rupture . . Archd. S. McKay." The plaintiff alleged, "that . . Graham had a large rupture . . had other bodily diseases, of some one of which he finally died, and that he was of unsound mind. . . that the negro's feet had been severely frost-bitten, and that they sometimes became swollen and subjected the negro to inconvenience: . . [142] the defendant insisting, . . that, from the evidence, the negro died from the maltreatment of the plaintiff himself and his other slaves, . . his Honor instructed the jury, that the convenant extended as well to soundness of mind as of body, . . that this did not imply that he was very bright . . and if, from the evidence, they believed, that the slave, although dull and below the ordinary standard of human intellect, yet . . possessed sufficient capacity to perform the ordinary duties of a slave, the warranty in that respect was not broken;" Judgment for the plaintiff, affirmed.

State v. Martin, 12 Iredell 157, June 1851. "The prisoner [a man of color] was indicted[1] for stealing a slave, Giles, . . [158] Booker . . stated that . . 1850, he was passing on to the South, in company with . . Null, with two loads of tobacco, . . that they stopped for the night . . near the house of the prisoner, in the county of Davidson: that a horse . . was taken violently sick, . . that the prisoner . . assisted in procuring . . remedies . . two or three drinks were given to the prisoner by the witness: that [the prisoner] . . said he could put him into a business he could make money much faster, if he would be sworn; that he had fine stock and could make him rich as Hairston: the witness asked . . if it was horses: he said no, they were worth from $600 to $1200 a piece, and, by being smart, witness could make five or six hundred dollars in a few weeks: . . [159] the witness inferred . . what that business was, . . December . . he again came to the house of said prisoner on his way home, . . upon being informed by the witness, that he would go into it, the prisoner told him that he had several negroes out: . . he could not keep them near him for fear of being suspected: that there were a great many fox hunters around him, and he had been frequently tracked by their dogs, and been compelled to stand in water up to his waist for an hour at a time in cold weather, to escape: that he induced the negroes to believe he was going to send them to a free State: that he was interrupted . . by a man . . who . . was also going to take off negroes for him: . . the arrangement was made for the witness to return about Christmas and the prisoner would have a slave . . which he was to take off and sell and divide the profits with the prisoner: . . [160] after Christmas . . he returned . . about one hour by sun . . the prisoner gave [negro] Jeff a dram . . sent Jeff after the negro . . between midnight and day . . the prisoner came to him with the negro . . Giles: that he had had him six or seven weeks: that he must . . be off as soon as possible: . . to get his horse and go on by himself . . he was afraid, if Giles went with witness, they would be . . stopped: that he knew a bye-way, . . and he would take Giles and meet him . . that after waiting for some time . . the prisoner came with Giles, said

[1] Under the acts of 1779 and 1848.

he had been bothered by Swicegood's dogs: . . delivered Giles to him and told him to be off . . had sent off two negroes before and had never heard from them again; that he brought Giles to Salem, . . [161] and finding that the jail . . was not completed, carried him to Germantown and lodged him in jail, and immediately sent word to Smith where his negro was: . . that in a short time witness returned to the house of the prisoner for the purpose of getting another slave; was furnished . . with $400 spurious money and a fictitious note for $300; . . told him he had sold Giles for $700, and arrangements were immediately set on foot to carry off another slave, . . a blacksmith; . . that witness went to Mr. McDonald, . . a Magistrate . . and disclosed to him what he had done . . that he returned to the prisoner's . . prisoner chained his horse to the smokehouse, told him he had deceived him, . . that he would kill him that night, that he belonged to a Murrel clan and if he did not kill him some of the clan would, . . another white man . . was present, who also expressed himself, that the prisoner had been treated badly by witness: that witness, becoming alarmed, left . . that he returned next day in company with one of the neighbors, sent for Mr. McDonald and had the prisoner arrested. . . [162] Booker stated his object was to detect Martin and get the reward, if any were offered, for the negroes. . . Swicegood testified, . . that he approached the kitchen softly and got near a crack, . . that the prisoner . . said . . it was a dangerous business, but he did not know any better they could do: that his wife replied, she did not know that they could: . . [163] Smith . . proved, that he resided . . about seven or eight miles from the prisoner's, . . that his slave Giles left . . without his permission . . 22d . . of November, 1850; and he found him in Germantown jail the 8th . . of January, 1851, and carried him home and sold him immediately: . . [165] The Court . . instructed the jury, that . . the prisoner was to be tried as if he were a white man: . . that they were to divest themselves of all prejudice on account of his color, . . [167] The jury found the prisoner guilty." New trial refused.

[169] "There should be a *venire de novo*." [168] "In '*Hardin's case*,'[1] . . it is decided, that the taking . . of the slave must be *from the possession of the owner*. . . [169] this Court cannot give to a statute the effect of creating a new felony, unless the intention of the law-makers is expressed in . . unequivocal *terms of enactment*." [Pearson, J.]

Walters v. Jordan,[2] 12 Iredell 170, June 1851. "petition by a widow for a year's allowance out of the personal estate of her late husband,[3] who died intestate. . . The intestate seduced the petitioner and lived in adultery with her and then married her. After the marriage and while they were living together, the petitioner—she and her husband being white persons—had criminal conversation with a negro man, by whom she became pregnant. The husband . . ordered the petitioner to leave

[1] P. 78, *supra*.
[2] See same *v.* same, 13 Iredell 361, p. 167, *infra*.
[3] Rev. St., ch. 121, sect. 11.

his house. She did so . . and by his permission lived in another house on his premises, where she was delivered of a mulatto child. The husband did not receive her into his family again, nor treat her as his wife, further than to allow her to live in the said house and to maintain her there until his death; which happened soon after the birth of the child."

Held: "the petitioner was entitled to a year's support" [172] "she did not 'go away and continue with her adulterer;' whom, as far as appears, she never saw after her husband forced her to live separately from him."

Clagon v. Veasey, 7 Ired. Eq. 175, June 1851. [176] "in consequence of a punishment, inflicted upon Hasty by her mistress, for her insolence, she ranaway; when his wife insisted he should sell her: that he accordingly applied to . . Rhodes to ascertain from . . Simmons, if he would take her to Norfolk and sell her for him; that there the matter dropt:"

Hinton v. Lewis, 7 Ired. Eq. 184, June 1851. Will, 1850: [185] "in this division I wish my . . negroes may be kept in families, as far as may be practicable."

Taylor v. American Bible Society, 7 Ired. Eq. 201, June 1851. Mrs. Hollister's will: "to the Bible Society, Education, Colonization and Home Missionary Societies, each five hundred dollars. . . [202] as to my slaves, if I could any way effect it, I would emancipate them. I do not wish to entail slavery upon them. George Physioc has been promised, if I ever sell him, to let him have a chance to buy himself; if this can be done I desire it may by his paying my estate a hundred dollars."

Held: [206] "the several legacies . . are void for uncertainty . . as to the slaves . . She no where leaves them their freedom, . . As to George, so far from giving him his freedom, she expressly directs a sale, and only permits him to purchase himself at a particular price." [Nash, J.]

McEntyre v. McEntyre, 12 Iredell 299, August 1851. In 1848 a negro woman was sold for $300.

Houston v. Starnes, 12 Iredell 313, August 1851. "before the sale, the purchaser [the plaintiff] was apprised, that she had symptoms of disease upon her; and . . [314] she died of consumption," "the plaintiff . . had by his agent sold the negro in Mississippi for $175. . . in her diseased state the negro was not worth more than 75 or $100."

Craig v. Miller, 12 Iredell 375, August 1851. Mrs. Rhodes and her son-in-law, John Miller, "sold the negro [in 1834] to . . Craig, who lived in South Carolina, and kept the slave . . there for ten years, . . his executors sold him to the plaintiff, who had . . him for four years. The slave then ranaway, and came back to the residence of Mrs. Rhodes, with whom the defendant [a son of John Miller] lived; and the slave was committed to jail as a runaway, but was afterwards taken out of jail by the defendant, . . and upon demand of the plaintiff refused to deliver him; . . Judgment . . for the plaintiff for the value of the slave," Affirmed.

Polk v. Robinson, 7 Ired. Eq. 235, August 1851. [236] "Orr hired out the slaves from year to year, but, from time to time, he also made sales of some of them, as often as four times, for the purpose of paying the testator's debts."

Allen v. Bryant, 7 Ired. Eq. 276, August 1851. [279] "none of the negroes, except . . Maria, could have been hired for any thing, Grey and his wife being very old, and the four boys [Maria's children] being between the ages of eleven and five years;" Pearson, J.: [280] "four were just becoming valuable;"

Lehman v. Logan, 7 Ired. Eq. 296, August 1851. "that she is old and infirm of mind, incapable of managing the estate, . . that the slaves have been so little kept in order, that they have become idle and drunken;"

Hales v. Harrison, 7 Ired. Eq. 298, August 1851. "The plaintiffs were entitled to a reversionary interest in a negro boy, after the death of their mother. She . . in 1838, sold him to the defendant, for . . $580, who soon thereafter carried him out of the State to parts unknown, and sold him at an advance of $85. . . [299] We are satisfied the defendant had notice. . . The defendant says, these items ['expenses, commissions, etc.'] will about equal the advance in the price. . . the plaintiffs are entitled to a decree for . . $580, with interest from the death" of their mother in 1844.

State v. Dean, 13 Iredell 63, December 1851. Indictment for stealing a slave. Smith "testified that the slave Lewis ran away from his plantation in Anson county, in . . October, 1850, and was not seen by him until he was taken out of jail in Tazewell county, Virginia, in May, 1851: . . and was brought back to this State. . . White . . swore that on the first of January last, he and . . Brown arrested the slave . . in Guilford county, and were making arrangements to carry him to jail in Greensboro', as a runaway slave, when the prisoner passed by . . with his wagon. . . [64] they had no vehicle . . and proposed to him to carry him in his wagon. . . the prisoner agreed . . for . . one dollar and fifty cents, provided the witness and Brown would meet him on the road to Greensboro' at the house of one Bowman, . . the witness and Brown proceeded with the slave to the house of Bowman, and soon . . the prisoner drove up . . a hundred yards beyond the house before he stopped: that the witness carried the negro out, and the four proceeded on their way . . No one at Bowman's saw the prisoner, . . About a mile from [Pegg's] house . . the prisoner made a proposition to turn back with the slave, and keep him until a reward should be offered, and also said his horse was worried, and the weather very cold. The witness and Brown opposed . . As they approached [Pegg's] . . house, . . he gave them [a ten dollar bill] to buy liquor, and he drove on about seventy-five yards beyond the house . . before he stopped. . . When they overtook him . . the prisoner again complained of the cold and said his horse was too much fatigued to proceed. He also proposed to take the negro and keep him for a few days in a vacant house of his, . . to give time for a reward to be offered: . . and would then proceed to jail with him: . .

[65] also said, it would not do to let any one see the slave in his possession, as it was against the law. . . They all then went back to a vacant house, . . where they remained during the night with the slave. The next morning the witness and Brown returned to their homes, leaving the slave . . with the prisoner. On Saturday . . the witness returned and asked . . if he had carried the negro to jail. He replied that he had not: that no one knew where the slave was except himself and another: that he could go to him then, and expected to do so again, and would shoot any one whom he should discover watching him. He said they could only have gotten five dollars by carrying the negro to jail. . . [66] Brown . . saw the prisoner a few days after, and threatened to make the circumstances . . public. The prisoner said, if he did, that the witness and White would be punished, as they, alone, had been seen with the slave." [65] "Subsequently, [White,] . . Brown, and the prisoner were arrested" [70] "a witness . . swore, that, in April, 1851, he went to Virginia in search of the slave,—found him in the possession of . . Lowder, to whom he had been sold by [Abram] Weaver,[1]—committed the slave to jail, and caused Weaver to be arrested on a charge of negro-stealing. . . after his arrest, Weaver told the witness that he had got the slave from the prisoner, and had taken him over to Virginia, and sold him, as his agent. This [last] evidence was objected to . . [71] admitted, and for this the prisoner excepts."

Held: "The exception is well founded." New trial granted.

Washburn v. Humphries, 13 Iredell 88, December 1851. "The defendant had a negro stolen from him, and offered a reward . . for the apprehension of the felon, one Moore, and the negro: . . '$100 for the apprehension of both, or $50 for the negro out of the State, $25 for the apprehension of the negro within the State, and his delivery to the subscriber, or for keeping him so that his owner gets him again.' The plaintiffs apprehended both Moore and the negro within this State, and put Moore in Rockingham jail, and delivered the negro to the defendant, who paid them $25, but refused to pay the other $75, for which the plaintiffs bring this suit. . . [89] they had judgment for $75,"

Venire de novo awarded: "if the negro should be secured, before getting out of the State, then he leaves the felon to the vigilance of the citizens."

Foy v. Foy, 13 Iredell 90, December 1851. [93] "The petitioner . . avers, that 'since the defendant separated himself from her [in 1844], he . . has been and is living in adultery with a negro woman, or slave, the property of' —— . . [94] the jury . . say, that the defendant did separate . . [95] and live in adultery with a negro slave," The divorce was granted.

Venire de novo awarded: the finding of the jury "is 'general' as to *the time* of the separation. . . [96] time *is material*,"

Richardson v. Strong, 13 Iredell 106, December 1851. [107] "the defendant became insane, . . He had negro servants, but his physician

[1] See State *v.* Weaver, p. 162, *infra*.

and relations thought it necessary that there should be some white person with him, as a nurse and a guard against his violence;"

State v. Cheek, 13 Iredell 114, December 1851. [115] "The prisoner was indicted with Aaron Malone and Robert George, a free negro, for passing . . a counterfeit note, purporting to be a note for $20, issued . . in South Carolina. . . They were . . found guilty, and Malone and George submitted to the sentence . . Seymore . . swore, that he kept a shop, . . on a high road . . that in the evening . . March, 1850, . . Davidson, with one Stout, stopped for the night with their waggons . . about 250 yards from his house: that same evening the three prisoners came . . and said, they had been working in the employment of . . McCullock [*sic*], a contractor engaged in the improvement of Deep River . . and they asked for some liquor and to stay all night: . . George . . offered him a $20 bill . . which he refused to take, telling George that he was not a judge of South Carolina Bank Notes, but he did not think that was good: . . [116] George went back to the other prisoners, and soon returned with a peice [*sic*] of silver change . . that they retired, soon afterwards, to the room in which they were to sleep: . . Malone and George left the house; and, after some absence, they returned . . and then Cheek got up and went away with George, . . Davidson deposed, that . . George, came to the camp and said he was free, and named John George, . . proposed to buy a watch, which he saw the witness wearing, and that he refused to trade with the prisoner because he was a negro: that George . . returned with . . Malone, who said his name was . . Johnson, and . . they bargained for the watch at $13, and Malone offered . . the note . . for $20, . . saying that he and George were both interested in it; . . that they had received it from McCullock . . and thereupon the witness delivered the watch and received the note: that the witness paid Malone one dollar, but could not make change for the other six, . . [117] that, in about half an hour, . . Cheek . . came to the camp with George, and said his name was Brooks, . . that he had advanced the money to Malone for the $6, . . and he would take $5, if he would pay it at that time; and the witness borrowed . . from Stout, and paid . . McCulloch [*sic*] deposed . . that the prisoners worked under him in February or March, 1850, and that he paid to each of the white men $3, and to the negro $1; and that he did not let either of them have a $20 note. . . [118] a clerk in the Bank . . at Raleigh . . stated that it was a counterfeit,"

[123] "no error in the judgment."

Crump v. Thompson, 13 Iredell 150, December 1851. "in 1835, Peebles built a cabin, and also a still-house on the land . . and placed two of his slaves in the cabin, . . [151] and that his slaves remained there, and he used the distillery, until . . 1838, when he removed the slaves, and stopped distilling,"

State v. Nat (a slave), 13 Iredell 154, December 1851. "Appeal from the Superior Court . . of Beaufort County, . . [155] This was an indictment against . . a slave, for hiring his time contrary to the act of

assembly.[1] . . Nat, . . during the whole of . . 1850, spent a large portion of his time on Blount's Creek, where he had a wife, . . and that he was engaged in running a boat on the river, and carrying turpentine, and other articles, to [the town of] Washington and back . . that he . . was not subject to the . . control of any one, so far as the witness saw or heard. There was a white man . . Pritchet in the boat with Nat, the first half of the year 1850, but the latter part of the year, Nat run [*sic*] the boat alone. The witness . . hired Nat three days, to work in his new ground, in May, 1850, and paid Nat for his work. . . Nat told him . . that he hired his time from his master; that he was to give his master eighty dollars a year, and pay him quarterly. Nat further stated, he and Pritchet were partners in running the boat; that they gave the owner of the boat one-half of what they made, and divided the balance between them. . . The Jury . . found the defendant guilty. . . [156] The Court refused to grant a new trial."

Judgment reversed: [158] "the Superior Court of Beaufort county had no original jurisdiction of the offence charged against the defendant," [157] "The Act of '31 [2] made no alteration in the Act of '94,[3] but introduced a new offence, to wit: suffering a slave to go at large as a free man. A custom had sprung up in the State, particularly among that class of citizens who were opposed to slavery, of permitting persons of color, who, by law, are their slaves, to go at large as free,—thereby introducing a species of *quasi* emancipation, contrary to the law, and against the policy of the State." [Nash, J.]

Sparkman v. Daughtry, 13 Iredell 168, December 1851. Action to recover the value of a slave. [168] "The defendants were the owners of the fishery, and hired Jacob of the plaintiff, as a boatman, to work there. On an attempt to put out the seine, the boat . . was upset and he drowned. Much conflicting testimony was given, . . as to the state of the weather, . . being a very dark and stormy night, and on the propriety of [carrying out the seine] . . at that time. . . [169] A verdict and judgment . . for the plaintiff" Affirmed.

State v. Weaver, 13 Iredell 203, December 1851. [204] "The prisoner was indicted for receiving from one Dean,[4] a negro man slave, named Lewis, the property of . . Smith, knowing that Dean had stolen him. . . it was stated by the Court, that under the evidence . . the prisoner could not be convicted, as . . Dean . . was then in confinement in the jail . . and had not been tried. Whereupon the Court, without the consent of the prisoner, . . ordered a juror to be withdrawn."

Held: "it was within the power of the presiding Judge, if he thought it essential to the furtherance of justice,"

Faucet v. Adams, 13 Iredell 235, December 1851. [238] "there were certain slaves which the debtor had caused to be run off to Texas,"

[1] Rev. St., ch. 111, sect. 31.
[2] *Ibid.*, sect. 32.
[3] *Ibid.*, sect. 31.
[4] See State *v.* Dean, p. 159, *supra*.

Page v. Goodman, 8 Ired. Eq. 16, December 1851. [17] "it was agreed . . that they would work the farm in the year 1838, . . under the superintendence of Creecy, as overseer; and . . Goodman was to put in the . . negro woman, and another, from his slaves at home, and two small white boys, who were the nephews of Creecy, and lived with him, . . [19] Goodman paid Creecy, in cash, . . $160, for the hire of his two nephews, in 1838, and for his part of Creecy's wages as overseer,"

Thompson v. Newlin, 8 Ired. Eq. 32, December 1851. "This cause came on, on a petition for rehearing the decretal order made . . at December Term, 1849."[1] [34] "that so zealous was she on the subject, that about a year before her death, she instructed the defendant, who was her general agent in the management of her money, to collect a sufficient sum and make preparations for then sending the slaves out of this State; but, not long afterwards, she recalled the instructions, because, she said, some of them must stay to wait on her, as she was old and infirm, and she was not willing to send some without all: . . [36] At December Term, 1850, on the motion of the plaintiffs the Clerk was directed to enquire what proceedings had been taken by the defendant for emancipating the slaves. The report states, that the defendant . . had emancipated the slaves by removing them in September, 1850, to Logan county in the State of Ohio, and there duly executing a deed of emancipation and having the same proved and recorded. . . the defendant . . stated: that he was advised by eminent counsel, that this mode of emancipation was equally effectual and within the trust, as that prescribed by Statute, and that it was preferable, as he believed, because he had reasons to apprehend, that, if the emancipation took place in this State by giving bond, some of the plaintiffs or other persons might detain some of the negroes in this State by secret means, or seduce them back, . . [37] so as thereby to forfeit his bond and subject them again to slavery: . . that the negroes were all willing to go to Ohio, and be emancipated, and live there:"

Held: [51] "the emancipation of the slaves is deemed effectual and proper, . . therefore, the bill must be dismissed with costs." [46] "the power of the owner to give, and the capacity of the slave to receive, freedom, exist in nature, and therefore may be used in every case and every way, except those in which it is forbidden by law. . . [47] neither in its terms, nor in its spirit, does it [the act of 1830] prohibit a *bona fide* removal of slaves to another State, for the sake of their freedom." [Ruffin, C. J.]

Hilborn v. Hester, 8 Ired. Eq. 55, December 1851. About 1837 the administrator [57] "sold Jane and her two children . . for . .$1528,"

Wooten v. Becton, 8 Ired. Eq. 66, December 1851. "Susan Jones made her will . . 1846, . . 'I am anxious to reward the meritorious services of the following named [twelve] slaves with the boon of freedom, . . and all their future increase . . and I direct my executors to

[1] Same *v.* same, p. 141, *supra*.

apply a sum, not exceeding three hundred dollars, to pay their passage and settle said slaves in some one of the free States.' . . The testatrix died in . . 1848, and before her death one of the above mentioned women had a child born, . . and since her death several others have been born." The bill [67] "states, that the executors are . . desirous to carry into execution the provision for the emancipation . . by carrying them out of this State . . but that they have been advised, that it is doubtful, whether they have a right to do so without having first had them emancipated in this State: and that they are willing to procure their emancipation here, and give the bonds . . provided they may be allowed to retain the estate of the executrix . . as an indemnity against loss"

Held: "the executors cannot apply to the purpose . . more than the sum specified in the will: . . [68] The purpose of the testatrix plainly denotes . . that 'issue and increase' was meant to include all born after the making of the will. . . [69] as emancipation may . . be effected . . by transporting the slaves and their settling bona fide in a state of freedom in another country or State, . . the executors have an option, as to which of the two modes they will adopt to execute the trust." [Ruffin, C. J.]

Green v. Lane, 8 Ired. Eq. 70, December 1851. In 1828 William S. Morris, of Newbern, [76] "carried the slaves Harriett and Freeman to . . Pennsylvania, and there caused proceedings to be had for their emancipation, and did, according to the laws of Pennsylvania, . . set free, as he was there advised, the said slaves, and then returned with them . . being advised . . that said emancipation was void here, . . the testator, under the advice of Judge Gaston, executed his will [[75] 'written by Judge Gaston'] in 1831," [74] "gave to his executor [Lane] all his estates, except a negro woman, named Patsy, and her three children Faucett [Harriett?], Albert, and Freeman, in trust, . . 'that as soon after my decease as practicable, and at all events within a year . . my executor remove beyond the limits of this State, and with the intent of a permanent residence to some State or country, where emancipation is unrestricted by law, . . Patsy, Harriett, Albert and Freeman, and there cause them to be entirely emancipated. . . that my executor shall apply one half of my money, debts due me, and the proceeds of the sales [of the rest of my estate] . . as a fund wherewith to effect the removal, and emancipation . . and to provide for them . . as my executor shall judge best, as the means of their education, improvement, and comfortable subsistence:' . . [76] subsequently . . the boy, William Henry, was born," [75] "By a codicil, dated . . 1838, the testator expressly republished his will, . . and he 'devised to [his executors] . . my piece of ground with the improvements on . . Craven street, . . also my . . furniture, my cow, and calf and ten shares of the capital stock of the Merchants Bank of Newbern; to hold . . absolutely, in trust nevertheless to permit my woman Patsy, to use, occupy, and enjoy the said [property] . . and to have the dividends . . during the natural life of . . Patsy, and after her decease in trust, to surrender up said . . estate to Harriett, Albert, and Freeman, . . to be held by them in absolute prop-

erty. . . I desire my executors . . to sell the lots, No. 83, and 67, in . . Newbern . . and of the proceeds . . I give unto William Henry Morris, son of said Harriett, . . one thousand dollars' . . The testator died in 1848, . . [76] Albert died before the testator . . The answer [of the executors] further states, 'that within the year after the testator's death, and before the filing of the bill [[75] "in 1850, by the legatees . . other than the negroes, and by the heirs, and next of kin"], the defendants removed the negroes, Patsy, Harriett and Freeman, to . . Pennsylvania, with the intent of a permanent residence . . and there caused them . . to be entirely emancipated.' . . [77] The answer, then, states the application of part of the funds of the estate to the removal and subsistence of the three negroes, . . and the payment of two years rent of the house and lot to Patsy."

Held: [77] "the pretended emancipation [in 1828] . . was manifestly a fraud on our law, and the Court cannot, upon any principle of comity, give effect to it. . . [78] Therefore, Harriett's son, William Henry, is a slave still, and the gift to him fails. The other slaves are in the same condition, unless they be entitled to their manumission under the will and codicil; and the Court is of opinion that they are not. If the case stood on the will of 1831, it would be otherwise,[1] . . [79] But it does not; . . it is apparent . . that the testator must have changed his mind as to the residence of the negroes, and that, when he made the codicil, he intended that they should be free and remain here. . . It must be declared, therefore, that . . Patsy, Harriett and Freeman, were the slaves of the testator at his death, and that they are to be accounted for by the defendants, as still being slaves, and also that the trusts created for their benefit . . are not valid" [Ruffin, C. J.] See same *v.* same, Busb. Eq. 102, p. 173, *infra.*

Hardy v. Leary, 8 Ired. Eq. 94, December 1851. Bullock's will, 1839: "that the negroes be hired out annually, and the hires appropriated to the support of my wife and children; but it is my express desire, if the income of my estate should not be sufficient for the support and education of my children, that my negroes should not be sold for that purpose, but that my family shall confine their expenses to their income."

Hudson v. Pierce, 8 Ired. Eq. 126, December 1851. Will of Thomas Hudson, who died about 1825: [127] "I lend to my . . wife during her life . . negro girl, Eliza Fails: the last of whom is to be emancipated at the death of my wife, together with any and all the children she may have at that time. . . five hundred dollars . . to my wife during her life; and at her death, it is to be put out at interest for the use . . of . . Eliza Fails." The widow died and her executor has "sold a negro woman, Sally, and her child, the offspring of Eliza Fails—who died during the life of the widow . . and has also in his hands the five hundred dollars,"

Held: [128] "such a testamentary disposition of the slave, Eliza Fails, and her children, . . before . . 1830, is null and void, as being

[1] As held in Thompson *v.* Newlin, p. 163, *supra.*

for their emancipation within the State. . . and the legacy of five hundred dollars is void also."

Chesson v. Chesson, 8 Ired. Eq. 141, December 1851. Will of Chesson, who died in 1847: [142] "that his five younger daughters should . . have a negro girl each, and, if his negroes should not increase to a sufficient number in time, that some of the other negroes should be sold for the purpose of procuring the girls. . . [144] the negroes . . by reason of their rapid increase were . . expensive."

Richardson v. Pridgen, 8 Ired. Eq. 153, December 1851. [154] "in 1838 . . Pridgen surrendered to . . [his wife's children] the remaindermen, several of the children of Chane, but kept her and two of her children, . . [155] In 1846 he made a deed for them to two of the remaindermen; . . was induced to do so because the negroes were increasing so rapidly—being then seven—as to render them an expense and burthen to him: and he urged the remaindermen, that they ought not to compel him to raise a family of negroes for them, but relieve him of them by taking them . . he was exercising a sound judgment in getting rid of the family of negroes."

Moore v. Ivey, 8 Ired. Eq. 192, December 1851. [196] "the last of the year 1843, . . two persons examined the girl [8 or 10 years old], and valued her at $250,"

Avera v. Sexton, 13 Iredell 247, June 1852. McAllister swore, that [249] "he went on the defendant's raft . . and assisted the hands in going over the falls [of the Cape Fear River]; that there were ten or twelve hands on the raft, more than the number usually employed in the highest freshet; . . [250] that some of them were trained and experienced in the management of rafts, . . that negro Frank, an experienced hand, remained at his post at the hind oar, notwithstanding the [wrong] order ['all hands to the fore oar']." There were only five [251] "white persons present on the defendant's raft."

Jones v. Glass, 13 Iredell 305, June 1852. "action . . to recover damages for an injury done to a . . slave . . by the overseer of the defendant. . . The plaintiff hired a negro man, named Willie, to the defendant, . . a miner, to be employed . . in the mine. The defendant had an overseer, . . Massey, under whom . . Willie and other hands were placed, . . On a certain morning, . . early in the day [Willie] quit his work, came to the negro house, where he usually lodged, and alleged that he was sick and unable to work. Massey . . missed him at the mine, and followed . . and attempted to tie him, for the purpose of correcting him. Willie offered to submit to correction, but said he did not wish to be tied. The overseer insisted . . and succeeding in tieing one arm, on which Willie made some move towards the door, as if he would escape. . . Massey took up a piece of wood, about three feet long and three inches in diameter, and gave him a violent blow on the left side of the head, and knocked him down, where he remained until the next day. A physician, who was sent for, stated, that he found Willie

lying on the floor, speechless; that there was a large fracture or indentation of the skull, and his whole right side was paralyzed; that he expected him to die in a short time; but that, after a few days, he began to get better, and so continued until he ceased to attend him; and about three months after he received the injury, he was sent home to his master. . . [306] the defendant . . discharged Massey, as soon as he was informed of it, . . The Court charged the jury, that Massey . . had a right . . to correct the slave in a reasonable manner, . . but if . . he negligently . . used an instrument, wholly unjustifiable for reasonable correction, and a permanent injury . . was thereby inflicted, the plaintiff was entitled to recover . . The jury found a verdict for the plaintiff,"

Judgment thereon, affirmed: [307] "it is but just to suppose, that . . [Massey] was satisfied that sickness was feigned by him. . . True, Massey was guilty of great negligence in the use of an instrument, calculated, not to correct, but to kill. The responsibility, however, is not confined to Massey, but extends to his employer." [Nash, J.]

Pate v. Railroad Co., 13 Iredell 325, June 1852. [327] "the defendant always had slaves as hands about the Depot, to assist in raising produce from the boats and letting it down in to the boat,"

Daniel v. Wilkerson, 13 Iredell 329, June 1852. "The action is for slanderous words . . that the defendant said . . that he believed the plaintiff had killed and eaten the missing hog, . . [330] as he, the plaintiff, was as big a rogue as any negro in the county."

Bell v. Jeffreys, 13 Iredell 356, June 1852. Held: [358] "Nearsightedness . . is an unsoundness, because it is a defect in an important organ." [Pearson, J.] Ruffin, C. J., dissented: [360] "It is known, that there are . . many more ['myopic persons'] among the white than the black race, according to their relative numbers. . . the organ is in its natural condition, and the subject of no malady whatever."

Walters v. Jordan,[1] 13 Iredell 361, June 1852. "a petition for dower, . . [362] the husband and wife had been married and lived together several years, until about three or four months before the husband's death; . . a witness deposed, that, on the day of separation, . . as he was going to the house, he met the plaintiff coming away in tears; . . the husband told him, that he had understood his wife was pregnant by a negro man, and he had driven the strumpet off, and she should never live with him again." [361] "a few months after the separation, he filed a bill against her for a divorce for cause of adultery with a certain negro ['slave'], by whom she became pregnant of a child, . . When the copy of the bill was served, it was read to her by the witness, who asked her if it was so, and she held up the child and said, it would show for itself; . . the witness . . thought it was a negro child, and asked her if it were not; and she replied, that she was not the first white woman that negro had taken in—that, when he first came about her, she hated him, but that, after a while, she loved him better than any body in the world, and she thought he must have given her something; that the witness then

[1] See same *v.* same, p. 157, *supra.*

said, he did not blame her husband for what he had done; and she replied, she did not blame him for any thing, except that he drove her off, before he knew, whether it would be a black child or not; and the witness remarked, that she [*sic*] supposed he had good reasons to believe it. . . [362] evidence was also given, tending to show, as it seemed to the Court, that, after the separation, the plaintiff committed adultery with a negro man," [364] "though he is not identified to be the same one," [362] "she continued apart from her husband, without any reconciliation until his death, and since that time has been a lewd woman. . . [363] The Court . . told the jury, there was no evidence, that she continued with her adulterer, within the meaning of the law.[1] . . instructed the jury, that the act of separation must be voluntary on the part of the wife . . to bring the case within the meaning of the law. . . The jury found the issue for the plaintiff,"

Judgment thereon, affirmed: she does not forfeit her dower, for [364] "the plaintiff cannot be said to have willingly left her husband;"

State v. Bill (a slave), 13 Iredell 373, June 1852. [377] "The warrant charges, that, at a late hour of the night, Bill was discovered concealed under the bed of Thomas Thompson, with an intent to commit some felony or violence, and upon being so charged, in order to avoid it, he 'impudently and insolently' made [[373] 'highly slanderous'] charges, injurious to the character of a young lady living in the house." [374] "the magistrate adjudged, that the slave should be punished by receiving a number of lashes.[2] . . the owner of Bill appealed to the County Court. There, a motion . . that the charge should be tried by a jury . . was refused . . and judgment being pronounced upon Bill, his master prayed an appeal to the Superior Court, which was allowed. . . dismissed . . *certiorari* . . refused, and the owner of Bill appealed to this [Supreme] Court."

Held: [378] "his Honor acted properly in dimissing the appeal and refusing the *certiorari*." [375] "The acts of our Legislature on the subject of slaves are mostly police regulations. . . if, on our Statute Book, some few acts are retained, which we could wish to see abandoned, still, the spirit of our modern legislation is to moderate the evils of slavery, . . [377] What acts in a slave towards a white person will amount to insolence, it is manifestly impossible to define—it may consist in a look, the pointing of a finger, a refusal or neglect to step out of the way when a white person is seen to approach. But each of such acts violates the rules of propriety, and if tolerated, would destroy that subordination, upon which our social system rests." [Nash, J.]

Felton v. Long, 8 Ired. Eq. 224, June 1852. [227] "At the sale in 1819, made by Simeon Long [administrator], under the order of the County Court, the boy Lewis was purchased . . for $838, and has been sent to parts unknown. Esther and her child were purchased by Simeon Long, for $776. He has sold the woman, but still has possession of her issue."

[1] Rev. St., ch. 121, sect. 11.
[2] *Ibid.*, ch. 111, sect. 41.

Sanders v. Jones, 8 Ired. Eq. 246, June 1852. [248] "The agreement between the father and son was, if the latter would take slaves to Alabama [where he resided], and hire them out, the former would give the latter one-half the proceeds; and allow him his board and schooling for one year. The number of the negroes was twelve; . . the slaves were hired out . . for . . twelve hundred dollars, and notes taken from the hirers."

Washington v. Blount, 8 Ired. Eq. 253, June 1852. Will of Nathan J. Blount: I. [254] "I desire that my two negro men . . shall continue to labor for the benefit of my estate, for three years after my death: or pay the sum of seven hundred and fifty dollars each to my executor. At the expiration of that time (three years), I desire that they may be permitted to select their masters: . . [255] and empower my executor to sell them to such . . at a nominal price: or to liberate them, if it can be done consistently with the laws of North Carolina, as they may prefer: my intention and desire being to have them kindly treated and properly taken care of for the remainder of their lives,"

Held: (1.) "Should the negroes prefer to remain in this State, it will be the duty of the executors to sell them *as slaves*, and to account to the estate for a fair and reasonable price." "to enjoy their freedom *in this State*, by selecting some one, who is to become their ostensible owner, at a *nominal price*, and who will 'treat them kindly, . . for the remainder of their lives' . . is only another . . disguise, under which to make free negroes, and introduce a sort of *quasi* freedom, wholly incompatible with our institutions. . . Of course, he [the executor] . . is not obliged to put them up on the block, . . but may sell them at private sale, . . [(2.)] Suppose they may prefer to be emancipated. The executor . . may give the bonds required by the statute [of 1830], and send them out of the State: or he may send them out of the State, and thus liberate them without the bonds." [1]

II. [256] "Should my negro woman, Harriet, desire to be sold in the neighborhood of Washington, where she was raised, I authorise . . my executor to sell her and her child Sophy to such person as she may select in that neighborhood, and for such price as he may think proper. . . to hire out said Harriet for six or twelve months, to such person as she may select, which will give her an opportunity of choosing her master, or she may remain with her mistress eight or ten years, if she wishes." "Harriett preferred to remain with her mistress (the widow of the testator): but she has had several children, and, as the widow says, her services are not worth the maintenance of herself and children."

Held: "if the widow is not willing to maintain Harriet and her children, free of charge, the executor must sell her. . . may sell to any person in the neighborhood of Washington, Harriet may select, for a reasonably fair price, at private sale. And it is evidently the testator's intention, that not only the child Sophy, but the children born since, should be sold with their mother, to some kind master. And . . the executor

[1] Thompson *v.* Newlin, p. 163, *supra*.

is at liberty to aid the woman with his advice in making a selection." [Pearson, J.]

Respass v. Lanier, 8 Ired. Eq. 281, June 1852. In 1814 a negro girl was sold for $400.

Eaves v. Twitty, 13 Iredell 468, August 1852. "The jury were . . instructed . . that a mere propensity to drink would not be in law sufficient to constitute unsoundness, unless this had been produced by it at the time he was sold. . . it was argued, that Bob had acquired such a *habit* of intemperance as materially impaired his value. But a habit is not, in itself, unsoundness, . . no error" [Nash, J.]

Lush v. McDaniel, 13 Iredell 485, August 1852. [486] "physicians, who attended the woman in the latter part of her life, . . deposed that she died of syphilis, which . . might have existed for several weeks, and probably for two or three months; . . in answer to their inquiries the woman stated her symptoms . . also told them, that she had been so diseased . . before the sale"

McEntire v. McEntire, 8 Ired. Eq. 297, August 1852. "Juno was . . subject to periodical enlargement of her legs and abdomen, which rendered her almost, if not entirely useless; . . [298] usually came on with the warm weather . . and continued until the cold weather"

State v. Levi (*a slave*), Busbee 6, December 1852. "The prisoner was indicted at Caswell . . for burglary, . . acquitted; but was found guilty of grand larceny. . . he was charged to be the property of . . Williamson, who was duly notified to come forward and defend him. . . he had hired him to . . Wagstaff, who also had notice to appear and defend the slave. . . judgment against . . Wagstaff for the costs of the prosecution,"

Reversed: [7] "upon a proper construction of the Act,[1] . . the permanent owner . . was the person intended."

State v. Abram M. Weaver, Busbee 9, December 1852. "The defendant was indicted[2] . . for taking and conveying a free negro, named Jim Corn, out of the State, with intent to sell him as a slave. . . Brown testified that . . 1848, . . While camped . . Robertson came and asked prisoner if the free negro, Jim Corn, was going with him . . over the mountains. Prisoner said, not to his knowledge. R. then remarked that he had seen Jim Corn a few hours before, and he said he was going . . The prisoner then said . . if Corn wanted to go, he should not sleep in the wagon. . . Prisoner proposed that they should take Jim Corn . . to wait on them, but witness objected, there being but a one horse wagon . . and that they would have no use for him. The prisoner finally agreed to pay the expenses of the boy on the road, . . They all went on together . . into Virginia. . . along the usual public road, . . There was no attempt to conceal the boy, . . [10] after they had passed into Virginia . . Corn gave the witness some insolence, when the latter . . knocked

[1] Rev. St., ch. 111, sect. 48.
[2] *Ibid.*, ch. 34, sect. 12.

him down. The prisoner told him not to abuse the boy—that he intended to put him in his pocket before he got back. . . said in a jocular way, . . They went . . to the house of one Lowder, with whom the prisoner . . rode off, and returned with another man. Suspecting that the prisoner intended to sell the boy . . the witness took his horse . . and returned to North Carolina. . . Evidence was also offered of the prisoner's confessions of having sold the boy . . [11] verdict of guilty. . . sentence of death . . appeal . . granted without security, it appearing that he was insolvent,"

Judgment reversed, and *venire de novo* awarded: "There was no evidence that the free negro was taken . . out of this State by violence; . . [15] this Statute does not include cases of fraud." [Pearson, J.]

State v. Melton and Byrd, Busbee 49, December 1852. [50] "The indictment [for fornication] . . is found on the Act of 1838, ch. 24th, . . Melton is of Indian descent, ['but in what degree they [the jury] could not say,'] and . . Byrd is a white woman; . . and they allege that they were legally married."

Held: "it cannot be supposed it was the intention of the Legislature to forbid marriages between white persons and persons of Indian blood, howsoever far removed. . . [51] when in 1838 they extend the penalty inflicted in the 5th sec. of the 71st ch. of the Act of 1836, they must have meant that the offence . . should be a marriage within the degrees [1] specified in the Act of 1836." [Nash, C. J.]

Allen v. Allen, Busbee 60, December 1852. "The action was trespass *vi et armis*; . . the plaintiff offered in evidence a duly certified copy from the minutes of Brunswick County Court, . . July . . 1808, . . [61] 'On motion . . by George Davis, Esq., to emancipate Sam, . . formerly the property of . . Hooper, Esq., deceased, and a mulatto woman, the property of Elkanah Allen, by the name of Clary; and it being stated to the Court that the said slaves have rendered meritorious service to their owners, the said Court do . . direct, that the said slaves be emancipated . . agreeable to the Act . . Sam, by the name of Sam Hooper, and Clary, by the name of Clary Beel. . . further ordered . . that upon sufficient security being given . . to keep the said persons . . from becoming an incumbrance upon any county in the State, that the Clerk issue a certificate of their emancipation,' . . also . . a certified copy of a bond executed by Elkanah Allen and John G. Scull, of record in Brunswick Court, . . 1809, . . 'that whereas . . Elkanah Allen did, on 26th day of July, present to the Court of Pleas . . a petition praying that Clary . . should be emancipated . . under the name of Clara Beel, . . Elkanah Allen shall . . notwithstanding the emancipation . . keep her from ever hereafter being chargeable to the county,' . . the plaintiff [Kitty Ann Allen] is a daughter of . . Clary. . . Clary, from the time of her alleged emancipation to the time of her death, acted as a free person, . . and . . the daughter . . also . . until some five or six years prior to the commencement of this suit, when she was seized by the defendant, the grand

[1] "any person of mixed blood to the third generation,"

son of Elkanah Allen, . . The plaintiff then offered to prove that she was born subsequent to the alleged emancipation . . and counter evidence was offered by the defendant . . His Honor being of opinion that the record exhibited did not show a valid act of emancipation, . . [62] the plaintiff submitted to a nonsuit,"

Judgment reversed, and *venire de novo*: [63] "Surely, after such a distinct acknowledgement by the owner, that he applied for and obtained . . the license to liberate his slave, . . and he and all other persons had for more than thirty years treated . . her and her daughter as free, every presumption ought to be made in favor of her actual emancipation according to law." [Battle, J.]

Branch v. Houston, Busbee 85, December 1852. [86] "action of debt for the penalty of one hundred dollars,[1] brought by . . the owner of a runaway slave, against the defendant for harboring said slave."

City v. Kenedy, Busbee 89, December 1852. "an action of debt for a penalty, commenced . . before the Mayor of Elizabeth City, . . against the defendant, for refusing to serve as patrol, . . It was insisted for defendant that he was exempted . . because he was a . . minister . . of the M. E. Church, south, and was, at the time, in the regular exercise of the duties of his calling. . . his Honor being of opinion that . . defendant was not so exempt, rendered judgment for the plaintiff,"

Judgment affirmed: [90] "we cannot see that there was any conflict of duties, . . Had the defendant applied to the proper authorities of the town for an exemption, no doubt can exist, but what one would have been granted, exempting not only him, but every other regular minister . . residing within the corporate limits." [Nash, C. J.]

Abrams v. Suttles, Busbee 99, December 1852. "1850, the defendant . . agreed to hire to the plaintiff, . . four negro slaves to work in the plaintiff's gold mines—the slaves to be taken the 1st of February following, and kept the remainder of the year; . . [100] $8 per month for each slave. . . [Later] the defendant said they should not have the negroes, unless they gave a bond . . to pay for the slaves absolutely, if they or either of them, should die whilst in plaintiff's employment." They refused to do so. A witness "testified to the declaration of the defendant . . that the reason why he did not let the plaintiff have the negroes was, that they were unwilling to go with him."

Armfield v. Moore, Busbee 157, December 1852. [158] "hired the . . slaves [a woman and her child among them] . . and took them to Brewer's gold mine, in South Carolina; . . [a few months later] on . . Sunday, whilst witness was absent at a camp meeting, they suddenly disappeared . . [158] Belk . . on the same day . . saw them in the possession of the defendant in a secret place, in Union County, and that the defendant . . informed him that they had been stolen from his child in North Carolina [by a relative who claimed them]; and he had been down in South Carolina and had stolen them back."

[1] Rev. St., ch. 34, sect. 73.

Fanshaw v. Fanshaw, Busbee 166, December 1852. [167] "a petition was filed by the next of kin, . . setting forth that . . certain slaves had come to them as tenants in common; that an equal partition could not be made without a sale; and praying that a commissioner might be appointed to sell said slaves, . . granted,"

Sowell v. Barrett, Busb. Eq. 50, December 1852. Jack [53] "was and is a cripple, and would not [in 1847] . . have sold for cash for more than $400 . . nor would he [the plaintiff] . . ever have thought of its redemption, except from the extraordinary rise which has recently taken place in this species of property."

Robinson v. Lewis, Busb. Eq. 58, December 1852. In 1847 a male slave was mortgaged for $600. If redeemed, the mortgagee was to account for his hire at the rate of $125 per year.

Williams v. Chambers, Busb. Eq. 75, December 1852. [78] "(owing to an impression that . . the widow and child 'would be left destitute, and that bids made for her would enure to the benefit of the child as well as herself,) [the widow was allowed] to buy many valuable negroes . . at prices merely nominal.'"

Green v. Lane, Busb. Eq. 102, December 1852. [112] "This is a petition to rehear a decretal order made . . December Term, 1851,[1] . . [115] We ask seriously, whether one man out of a hundred would suppose that Patsy . . was intended by the testator to reside in Pennsylvania, . . and yet 'use, occupy and enjoy a house . . a cow and calf, situated in . . Newbern in this State.' We answer confidently, that he would not. . . If the clauses in the codicil, relating to the children, had been separate . . from those which apply to their mother, we might perhaps be justified in putting a construction upon it more favorable to them. . . [116] But neither the will nor codicil anywhere shows an intention that they should be separated from their mother, and we think, that as the testator has evinced a disposition to evade the law of the State in relation to her, there ought something to appear in the codicil, that he wished their fate to be different from hers. . . the bequest for emancipation has failed, . . Petition dismissed," [Battle, J.]

Owen v. Owen, Busb. Eq. 121, December 1852. Will: "should any of the negroes become unruly or disobedient, they are to be hired out by my executors,"

State v. Groves, Busbee 191, June 1853. "The prisoner was indicted under the 10th section of 34th chapter of the Rev. Statutes, for the offence of stealing and carrying away a woman slave, . . [192] The prisoner was first seen in possession of the slave . . 1852, . . slave being in a covered one horse cart, muffled up in a blanket. The slave had been a runaway for about sixteen months"

State v. Locklear, Busbee 205, June 1853. "The defendant was indicted under the Act[2] . . prohibiting free persons of color from wearing

[1] Same *v.* same, p. 164, *supra*.
[2] Act of 1840, ch. 30.

or carrying arms about their persons. . . he carried a shot-gun. . . verdict and judgment . . against the defendant," Affirmed.

State v. Tom (a slave), Busbee 214, June 1853. [215] "The indictment is under the 60th sec. of the 34th ch. of the Rev. Statutes, . . 'If any *person* shall . . pass . . any counterfeit bill' . . *In rerum natura* slaves are persons; . . [216] we guard their lives, . . with the same care that we do those of the white population. In carrying out this humane policy, the Courts in putting a construction upon penal statutes, have adopted the principle that slaves are not embraced, unless mentioned." [Nash, C. J.]

State v. Jacobs, Busbee 218, June 1853. "The defendant was . . [219] charged as a free person of color with having migrated into this State, and having failed to depart . . within twenty days, after having been duly notified so to do,[1] . . On the trial, . . the defendant having pleaded the Act under which he was arrested unconstitutional,[2] his Honor . . gave judgment (*pro forma*) dismissing the appeal for want of jurisdiction," Judgment reversed.

Green v. Allen, Busbee 228, June 1853. Held: [234] "it is the duty of every owner having slaves hired out, who resides in the State, to enlist them for taxation in the county of his residence." [3] [231] "when they began to be carried to other and perhaps distant counties to labor in mines, and on works of internal improvement, and were frequently removed from one place . . to another, the loss of the State became so great that it . . produced the act now under consideration." [Battle, J.]

State v. Cardwell, Busbee 245, June 1853. [246] "he himself, with his own negroes, had worked on" the road.

State v. Thornton, Busbee 252, June 1853. "the nuisance consisted in the frequent assembling together of persons, white and black, in the day time and the night, on work-days and Sundays, . . and drinking . . swearing and quarrelling. The disturbances occasionally took place in the shop of the defendant, but more frequently in front of and around it. . . the defendant sold spirituous liquors . . verdict of guilty," Judgment thereon, affirmed.

Sample v. Bell, Busbee 338, June 1853. "the defendant, living in Washington county, . . [339] hired Jerry for that year to one Ray, on the terms, . . that he was not to be carried out of Washington county. A few weeks thereafter, Ray hired out Jerry for the residue of the year to the plaintiff, with a like restriction, . . during the year, Jerry and other slaves, who had been hired by the plaintiff, were seen by defendant in the streets of Plymouth, . . on their way to work at a shingle swamp of the plaintiff, in Martin county, and defendant was told by Ray . . that plain-

[1] Rev. St., ch. 111, sects. 65-67.
[2] Bill of Rights, sects. 7 and 8.
[3] Act of 1846, ch. 67, sect. 6.

tiff had applied to him to have the restrictions removed in regard to Jerry, but that he had refused . . thereupon defendant told Jerry, who was not far from him, 'that he was not to go out of the County, unless compelled or forced to go out,' . . Jerry . . remained in Washington several weeks; he was afterwards put to work in Martin, before the expiration of the year of hire."

Judgment for the plaintiff, affirmed: [341] "it was an unauthorised interference with the rights of the plaintiff,

Croom v. Whitfield, Busb. Eq. 143, June 1853. Whitfield's will: "that . . my boy Caleb be hired out privately to the best advantage, . . during the life time of . . Caleb, and three-fourths of the hire [given to my youngest child] . . and the other fourth . . to . . Caleb annually."

Held: [144] "the bequest to . . Caleb . . is a void legacy,"

Thacker v. Saunders, Busb. Eq. 145, June 1853. "After the sale [1850], the complainant [remainderman] went to the defendant, who was a negro-trader, and told him that he should require him not to carry the slave out of the county. . . the defendant replied that he had bought the slave to sell. Thereupon the complainant filed this bill to enjoin the defendant from removing the slave beyond the limits of the State, and also to obtain a writ of sequestration. His prayer was granted, . . the defendant . . sold the slave to some one living in this State."

Marrow v. Marrow, Busb. Eq. 148, June 1853. Will, 1846: [149] "I wish the negroes kept on the plantation if manageable, if not, I wish my executors to hire them privately to honest, humane men." The testator "possessed . . thirty or forty slaves, . . [the executor] worked them upon the plantation, with the exception of a few whom he hired out, and two whom he sold for their bad conduct."

Joyner v. Denny, Busb. Eq. 176, June 1853. In 1843 a negro girl was sold for $310.

Wright v. Grist, Busb. Eq. 203, June 1853. [204] "that she has been prevented by the defendants from using the ton timber reserved . . her slaves have been driven from the lands leased"

Forbes v. Hunter, 1 Jones N. C. 231, June 1853. Held: [233] "The power to exempt hands from working on the public roads is . . restricted to a Court consisting of seven Justices." [1]

State v. Houser, Busbee 410, August 1853. "The defendant was indicted for selling spirituous liquor to a slave . . verdict of guilty,"

McBride v. Gray, Busbee 420, August 1853. "the plaintiff declared upon a special contract and upon a *quantum meruit* for services rendered in keeping, taking care of, and boarding a helpless old negro woman that had once belonged to the father of Mrs. Gray,"

Held: recovery barred by the Statute of Limitations.

[1] Rev. St., ch. 104, sect. 12.

State v. Abernathy, Busbee 428, August 1853. "The defendant was indicted . . for the offence of buying and receiving from a slave ten pounds of Iron."

State v. Langford, Busbee 436, August 1853. The prisoner, found guilty of the murder of his wife, had previously [441] "incited a negro in the neighborhood [to kill her]."

Re Champion, Busb. Eq. 246, August 1853. Will, 1848: [247] "Having . . purchased a negro girl . . and child . . it is my will . . that my wife . . enjoy them solely as her . . property;"

Taylor v. Rickman, Busb. Eq. 278, August 1853. [280] "that being without children she greatly indulged said [two] negroes, who, being females and thus indulged, have been almost valueless to him,"

Graham v. Graham, Busb. Eq. 291, August 1853. Will, 1845: [292] "I give to my son Robert Clay . . Sarah, wife of old Isaac, . . [293] to my son James Franklin, . . Isaac the potter, . . and old Isaac, . . to my son Henry, . . twenty-eight hundred and fifty dollars worth of negroes, the value of which to be ascertained by reference to my family book." He bequeathed "$2,850 worth of negroes" to each of his three daughters.

Nichols v. Bell, 1 Jones N. C. 32, December 1853. "an action of assumpsit upon a guaranty" [33] "The plaintiff is a man of color; the case states 'that he was neither black nor white, but that he was of a brown color, between that of an African and a mulatto, and that neither of his parents could have been a white person.' The plaintiff then proved, that, 'in Onslow, where the contract was made, he was reputed to be a free person, was called . . free Alfred Nichols.' The defendant requested the Court to instruct the jury, that, in the case of persons of a *shade* of color darker than that of a mulatto, the law presumed they were slaves." The court refused. Verdict for the plaintiff. "Rule by defendant for a *venire de novo.* Rule discharged,"

Judgment affirmed: [34] "We know of no law or decision, which authorises such presumption. . . If we had the power, we certainly have not the disposition to extend the principle further, than as recognised in the cases cited.[1] Let the presumption rest upon the African color; that is a decided mark: but to carry it into shades, would lead us into darkness, doubt and uncertainty, for they are as various as the admixture of blood between the races, and against the rule that presumptions are always in favor of liberty." [Nash, C. J.]

State v. Hyman, 1 Jones N. C. 59, December 1853. "an indictment for selling spirituous liquor to Charles, a slave, . . [He had] a written order from his master, . . 'Messrs. Austin and Hyman have my consent to sell and deliver to Charles, ardent spirits, whenever he shall apply for the same during the present year. Wm. Norfleet. January 11, 1853.'"

[1] Gobu *v.* Gobu, p. 18, *supra*; Scott *v.* Williams, p. 54, *supra.*

Held: [60] "The order is *null and void,* is in derogation of the letter and spirit of the act of the General Assembly, . . it was intended to guard the interest of the community against the vice and crime, the disorder and insubordination, which would grow out of an unlimited indulgence by our slaves in procuring ardent spirits; to secure the interests of the owner, in the health and strength and obedience of his slaves, and to protect the slave himself, in his moral health, against the allurements held out to him. . . [62] a permission in writing must be given for each distinct act of trading." [Nash, C. J.]

Robertson v. Roberts, 1 Jones N. C. 74, December 1853. Will: [75] "I . . bequeath . . three hundred dollars, or a negro girl worth that money."

Dozier v. Gregory, 1 Jones N. C. 100, December 1853. [101] "There [was] . . on the premises, . . also . . a quarter kitchen,"

Spruill v. Insurance Co., 1 Jones N. C. 126, December 1853. Action of assumpsit. "The plaintiff owned a negro slave named Harry, and . . 1850, the defendants insured his life for five years, at the amount of $500, by a policy of insurance, which contained the following clause: 'In case the said slave shall die by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped authority, or by the hands of justice, this policy shall be void, null, and of no effect.' . . 1852, the slave Harry ranaway from the plaintiff, and a reward was offered by advertisement for his restoration. Afterwards, on a night of September of that year, . . patrols lawfully appointed . . went to a negro house . . [127] where the slave . . was found. They told him to submit, and he would not be hurt, but this he refused to do, and came to the door armed with a scythe-blade . . twice . . re-entered the house, and shut the door. He then opened the door and jumped out, with the blade of the scythe raised in a striking position. One of the patrol, standing in front of the door, about eighteen feet off, without saying anything to him, shot the slave in the right side, of which wound he died in a few minutes. . . his Honor was of opinion against the plaintiff, and gave judgment accordingly;"

[128] "Judgment reversed, and judgment here . . for the plaintiff, for . . $500, with interest from the 1st of September, 1852." [127] "The death of the slave Harry does not come within any of the exceptions contained in the policy." [Nash, C. J.]

McBoyle v. Hanks, 1 Jones N. C. 133, December 1853. "The defendants . . own a Steam Saw Mill, . . where the slaves . . worked,"

Cooper v. Purvis, 1 Jones N. C. 141, December 1853. "The defendant, as administrator . . hired out a negro girl at a public hiring, in June 1851, for the residue of the year, to the plaintiff. . . it soon became manifest that she was pregnant, and in the Fall she was delivered of a child. There was proof of a long and well established custom in the county, . . to allow the hirer of a woman in such cases ten dollars."

Held: [144] "the decisive objection to the allowance of such neighborhood customs is the uncertainty in relation to the proof of them, and the

great inconvenience of having local laws . . to regulate matters which ought to be the subjects of express contracts." [Battle, J.]

Outlaw v. Hurdle, 1 Jones N. C. 150, December 1853. Will of David Outlaw, dated December 20, 1848: "It is my wish . . that . . Dr. Joseph B. Outlaw, have all my property" In wills made by the testator in 1847, and in the summer of 1848, [154] "provision was made for the liberation and support of his slaves; . . he had directed his slaves to be settled," A witness deposed that in March 1849 "the deceased . . said, . . that he was going down the country to get a negro he had given away, in order that he might be liberated with the rest of his slaves;" He died a few days after. [163] "Verdict for the propounder; motion for a new trial . . refused," Judgment affirmed. See Hurdle *v.* Outlaw, p. 187, *infra.*

State v. McNair, 1 Jones N. C. 180, December 1853. "the spirits were delivered by the defendant to the slave, after night-fall, in consequence of the following order, from the overseer of the negro: 'Mr. McNair:—You will please to send me 5 quarts of whiskey, by boy Jerry. James H. Higgs.' The price of the liquor was paid by the negro on delivery. . . [181] verdict of guilty. Judgment and appeal."

Judgment reversed, and a *venire de novo* awarded: "The act under which the indictment is found had no intention to abridge the legitimate use of his slave by the owner; . . it is not denied he may use him as his agent." [Nash, C. J.]

Henderson v. Henderson, 1 Jones N. C. 221, December 1853. Will: [222] "to my wife . . I loan, during her natural life, negro woman Molly, and after her death to be sold, and equally divided among all my heirs, . . My man Peter I want to be hired to such person or persons as he wishes to live with, until my son William . . becomes eighteen . . I then give . . Peter to . . my youngest daughter,"

Caffey v. Davis, 1 Jones Eq. 1, December 1853. See Caffey *v.* Rankin, p. 149, *supra.* [3] "No steps having been taken by the Executrix, Sophia, to send off the slaves Nelly and Nehemiah, after her death the plaintiff, as administrator . . with the will annexed, of James Davis, . . filed this bill to obtain the . . instruction of the Court of Equity,"

Held: [4] "The right of . . Nehemiah, Nelly and Wright to their freedom appears . . unquestionable. . . Alvis, upon a just construction of the will of James Davis, must follow the condition of his parents, and has a right to be emancipated with them. . . [5] Had they, at the termination of the life estate, been unable to comply with the condition, their issue . . would have gone with them into servitude to the remainderman, . . Why then should not the issue go with them into freedom, upon their performance of the condition . . Why any more necessity that the testator should mention issue . . to give liberty to such increase, than to doom it to slavery? . . [8] if [Nehemiah and Nelly] . . should entitle themselves to freedom, by complying with the laws of the State, so that the legatee . . could not take them, we do not see how he could

take their issue, which is but an incident to or a part of them.[1] . . [9] The administrator must . . appropriate such of their hires or profits since the time he has received or might have received them, to the purpose of emancipating and carrying them out of the State." [Battle, J.]

Alvany (a free woman of color) v. Powell, 1 Jones Eq. 35, December 1853. Will of Benjamin Dicken, who died in 1851: "I give . . to all my negroes . . their freedom freely and cheerfully. My will is that my executor carry or send my negroes to some free State, say, 1st. Indiana, Illinois, or Ohio, or some Western State, or Middle or Eastern State, or St. Domingo, or the British West Indies. I further give and bequeath to my negroes nine thousand dollars, to be raised out of my money matters, . . and further, I give unto my negroes the three thousand dollars my friend Joseph J. W. Powell is to give for my land, or one-half of the proceeds of the sale of my lands, as the case may be. . . [36] all the balance of my money matters, after the payment of my just debts, . . I give unto my poor negroes, to be equally divided among them." "Also, by a codicil . . made just before he died, he bequeathed all the balance and residue of his estate, . . to his slaves. The slaves . . were sent out of the State, according to its requirements and of the laws of the State, except Mariah, the mother of the plaintiff, and one other who fled the country for an offence against the criminal law. Mariah, the plaintiff's mother, in due time intended to go also, and was making the necessary preparation to do so, but was prevented by her death, . . She . . left three children, the plaintiff Alvany, Florence, who has since died in Canada, an infant under age, and John, who was born forty weeks and two days after the death of the testator, and died in . . 1852, in Canada. Mariah and the defendants Isham and Carey were the children of Lettice, and were born during the time she cohabited with a slave by the permission of the testator, which slave was recognised by her and her master as her husband, although not married by any form prescribed by law. In like manner, the plaintiff and her sister Florence were born of Mariah, but at the death of the testator and since, Mariah had no husband, such as is tolerated by masters of female slaves, nor had had for several months previous to that event. The plaintiff is a resident of Canada, and has a regular guardian of approved character, and in this Court sues by her next friend, . . [37] she claims to be entitled to one share in her own right, and to the shares of her mother Mariah, her sister Florence, and her brother John."

Held: [38] "It is the settled policy of our State not to allow negroes to remain here after they are set free; but the reasons upon which this policy is based, by no means make it necessary to hold that they have not a capacity to take property until after they have left the State. Their removing is not a condition precedent to emancipation, but is a condi-

[1] Judge Pearson, referring to this case, in Cromartie *v.* Robison, 2 Jones Eq. 218 (221), observes: "When the title to herself [Nelly] is given to her, in other words, when she is set free after the determination of a particular estate, the increase during that time, goes with her ['into a condition of freedom'], because the taker of the first estate is excluded by the rule . . in regard to slaves [that the increase passes to the remainderman]." Nelly is the remainderman.

tion subsequent: . . [39] With this saving, the humanity of our laws strikes off his fetters at once, and says, go 'enjoy life, liberty and the pursuit of happiness.' 1. We are satisfied that Mariah, at the time of her death, with the restrictions necessary to compel her to leave the State, was . . a free woman, and had capacity to take property and transmit it . . to her personal representative. 2. . . that all of her children are to be considered distributees, . . Our law requires no solemnity or form in regard to the marriage of slaves, and whether they 'take up' with each other, by the express permission of their owners, or from a mere impulse of nature, in obedience to the command 'multiply and replenish the earth,' cannot, in contemplation of law, make any sort of difference. In regard to slaves and free negroes, there is no necessity, growing out of grave considerations of public policy, for the adoption of the stern rule of the common law, 'a bastard shall be deemed *nullius filius*' . . [40] Therefore, we think that John, although the state of things existing about the time of his conception was somewhat equivocal, was entitled to the same share of his mother's estate as the rest of her children. 3. . . in regard to John, at the death of the testator, . . he was not *in esse*: . . although John was entitled to a derivative share, yet he was not entitled to an original share." [Pearson, J.]

Barnes v. Strong, 1 Jones Eq. 100, December 1853. [101] "he directs that the negroes . . fourteen in number, . . with their increase, . . shall be sold by his executors:"

Corbitt v. Corbitt, 1 Jones Eq. 114, December 1853. [115] "Kate . . together with four children, were . . sold by the . . widow, to . . Watlington,"

Eyre v. Potter, 15 Howard 42, December 1853. Mrs. Potter [58] "remarked . . that the greater part of the property [of her husband, who died in 1847,] consisted of slaves, and she would not own one for any consideration." [52] "she was content with the disposition of her property until she received a letter from her son [by a former marriage] . . in Philadelphia."

State v. Thomason, 1 Jones N. C. 274, June 1854. [275] "hearing . . some one exclaiming, 'I am stabbed or cut,' he went to the spot, and found the deceased lying on the ground, in the arms of a free negro,"

State v. Curry, 1 Jones N. C. 280, June 1854. "an indictment for murder, . . The prisoner and the deceased, both free persons of color, started from Gaston to ascend the Roanoke River in a loaded boat, assisted by a slave, the deceased being the manager. . . [281] heard quarrelling by a witness . . in another boat. . . he saw the prisoner striking at some one in the bottom of the boat, . . the deceased . . lying on his back with his legs across a pushing pole ['fifteen feet long . . broken'], . . the weapon used by the prisoner . . was . . a *boat-slide*; . . about eight feet long and three and a half inches wide, and two and a half inches thick, and had iron on each side near the ends; that he [witness] went into the boat where the deceased was lying, and washed the

blood off his head and face, and said to the prisoner, 'You have killed Harris,' to which he replied, 'Damn him, he is only drunk.' The witness then asked . . why he had done so, and he replied the deceased had stricken him first. . . there was a bruise or puncture on the cheek of the prisoner, . . [282] a bruise or cut over one of his eyes, and [the prisoner] said that it was caused by blows given him by the deceased. . . [283] the jury . . found the prisoner guilty."

Held: the crime is but manslaughter.

Jackson v. Keeling, 1 Jones N. C. 299, June 1854. [301] "He saw the hands taking in the seine, . . the seine became entangled with the wheels of his boat: He sent a hand down to disengage it:"

McClees v. Sikes, 1 Jones N. C. 310, June 1854. "The plaintiffs had placed the negroes . . to work at the business of getting shingles"

Bell v. Bowen, 1 Jones N. C. 316, June 1854. "On the first of January, 1851, the plaintiff hired to the defendant and another a negro slave . . for the year ensuing, . . upon the terms, that the slave 'was not to be carried out of the county of Currituck, nor to be employed upon the water, except at the hirer's risk.' The slave . . was sent across the Albemarle Sound, and set to work in a *shingle swamp,* in another county, about one hundred miles from his owner's place of residence. He was . . in good health when he left . . upon being demanded of the co-partner of the present defendant, he said that 'the slave was dead; that he died in Plymouth of ordinary sickness, after the best medical attendance he could procure.' A verdict was rendered for the value of the slave,"

Judgment on the verdict: [318] "We are forced to make the stipulation extend to a death by sickness, without reference to the question of neglect,"

March v. Harrell, 1 Jones N. C. 329, June 1854. "sold the [female] slave . . to . . a negro trader residing in . . Virginia, who carried her off to parts unknown."

Green v. Dibble, 1 Jones N. C. 332, June 1854. Action of assumpsit for the value of a negro woman slave. "The defendants were co-partners in running a steamboat . . being in want of a cook . . they applied to the plaintiff to hire the woman in question . . The plaintiff at first refused . . on the ground that she was much addicted to drunkenness, and she was afraid the life on board a steamboat would increase the force of that vicious habit, and expose her to greater danger. Whereupon, the defendants assured the plaintiff that . . they never allowed spirits to be carried on board . . and agreed . . that . . 'they would guaranty against all loss from that source,' . . the woman . . went into the service of the defendants, . . A few weeks afterwards, the woman became much intoxicated, and . . in a fit of drunkenness, delusion or abstraction, jumped overboard, and was drowned. . . [333] Verdict for plaintiff. . . rule for a *venire de novo* . . discharged," Judgment affirmed.

Thompson v. Bryan, 1 Jones N. C. 340, June 1854. [341] "one of the stipulations was, that the witness, in consideration of $125 . . should

convey the slave . . to the plaintiff, in trust, . . he, the witness, . . placed it in the possession of the plaintiff, that it might be with its mother."

Knight v. Railroad Co., 1 Jones N. C. 357, June 1854. Bond: "On the first day of January, 1853, the . . Railroad Company promise to pay . . Laspeyere . . one hundred dollars for the hire of negro Bob, (to be paid in quarterly instalments,) until the first day of January, 1853. The Company promises to feed and clothe said negro, and pay such expenses as are customary in the case of hired negroes."

McLean v. Nelson, 1 Jones N. C. 396, June 1854. [397] "these slaves were conveyed [in 1845] to . . Wilson, of . . Virginia, to be held by him 'in trust for her own benefit until the contemplated marriage should take place, and then for the joint use . . of herself and . . Nelson during their joint lives, and after the death of either of them, for the benefit of the survivor, and for the support and education . . of the issue of such marriage . . and, after the death of such survivor, in trust, to convey the same to the issue'"

Heath v. Gregory, 1 Jones N. C. 417, June 1854. A slave was hired for the year ending December 6, 1846, for $62.

Commissioners v. Frank and John, 1 Jones N. C. 436, June 1854. "an action . . against two slaves for violating the provisions of an ordinance[1] . . [437] the Intendant of Police . . proceeded to state that he was sitting in the back room of his office, in the town of Washington, on Sunday, with the door closed; that he heard a loud noise in the street, went to the door, and saw a company of half a dozen negroes, among whom were the defendants. They were laughing and talking, making much noise. One negro had a stick in his hand, and the others were engaged in a scuffle with him, with a view of taking it away. There was no quarreling or fighting, but only laughing and talking. There was no white person present. Witness commanded the negroes to disperse, which they did, and he returned to his office. In a very few moments afterwards, the witness heard a still greater noise at the same place, and, on going to the door, he saw that they were the same negroes re-assembled, making much noise and disorder, by loud and boisterous laughing and talking. He again dispersed them. . . verdict . . for the plaintiffs." Judgment thereon affirmed.

Dozier v. Sprouse, 1 Jones Eq. 152, June 1854. In 1831 "the intestate [residing in South Carolina] owned a slave . . of great value, being a 'first rate tanner;'"

Campbell v. Smith, 1 Jones Eq. 156, June 1854. "the intestate [Polly Coile] did intend at one time to convey her slaves to the defendant upon the secret trust charged ['that he was to hold them in a qualified state of bondage.'] . . It is highly probable that she thought he being their

[1] [437] "The Commissioners for the Town of Washington do hereby prohibit . . all disorderly shouting and dancing, and all disorderly . . assemblies . . of slaves and free negroes in the streets, market and other public places . . by day and by night. . . any slave violating said ordinance shall, upon conviction, be punished with not more than thirty-nine lashes for each and every offence."

father, would not hold them in absolute slavery, but would permit them to enjoy as much of freedom as was compatible with their condition. . . Williamson [one of the three subscribing witnesses to the deed] . . testified that a short time previous to the execution of the deed, the defendant informed him that Polly Coile wished to see him; . . she told him that she wished to convey her slaves to the defendant, . . [158] he told Polly Coile that . . they would not be free, but would be slaves and liable for the defendant's debts and subject to any disposition he might think proper to make of them; . . she replied, that she was fully aware of that, but she preferred they should belong to him, in preference to any of her relations, . . two other instruments were executed at the same time, one of which was a bond for $200, given by the defendant . . for the purchase money of the slaves, and the other an obligation by him to take care of, and furnish a home for, a superanuated [*sic*] negro man owned by Polly Coile,"

Held: "The testimony of the three subscribing witnesses rebuts . . the presumption . . that the deed . . was executed upon a secret trust," [Battle, J.]

Clement v. Clement, 1 Jones Eq. 184, June 1854. [186] "George . . was purchased . . at a [trustee's] sale . . June, 1828, . . The price bid was one hundred and forty-three dollars, . . [189] was in the possession of Polly Wilson, . . the witness had heard her request . . her nephew, to take George and hire him out, because he was so unruly that she could not manage him; . . witness . . on a certain occasion corrected him for misconduct, at the request of [his mistress.] . . [192] Bold, another boy who . . belonged to . . Clement, had been taken home, because his aunts could not manage him."

Lamb v. Pigford, 1 Jones Eq. 195, June 1854. [196] "The plaintiff, . . a man of weak intellect, illiterate and easily imposed on . . had become much dissatisfied with the conduct of his wife, who had given birth to a colored child, left his domicil and went to live with his brother, . . he made an absolute conveyance of the . . land he had been living on, also of his slaves, six in number, . . to exclude his wife from any participation in the . . property."

Anderson v. Arrington, 1 Jones Eq. 215, June 1854. Will: "I give to my wife . . during her lifetime, or widowhood, . . all the negroes belonging to me that are in this State, . . [216] and in the event of the death or marriage of my wife, . . I will . . that . . all the . . property, with exception of the negroes, [be sold.] . . It is my will . . that my negroes that are in . . Alabama should continue to be hired out annually, and should any one of my negroes, either in . . Alabama or here in this State, become disobedient or ungovernable, . . my executor is hereby authorised to sell or otherwise dispose of such negro or negroes." The widow made large profits [217] "from a blacksmith shop,"

Barnett v. Barnett, 1 Jones Eq. 221, June 1854. [224] "Susan Barnett [a deaf mute] . . had the negroes all brought in, and she was re-

quested to state how they were disposed of in the deed [of gift], which she did, assigning each negro as assigned in the deed. . . [226] Dr. Jordan [who drew the deed] received his information as to the names of the negroes given through a negro woman, who was much better acquainted with the signs of her mistress than he was."

Hinton v. Powell, 1 Jones Eq. 230, June 1854. [232] "but seven are left, . . too few to cultivate the plantation to advantage and keep it up . . that lands are now high . . and slaves hiring high—and the prayer of the bill is for a sale of the land." So decreed.

Cheeves v. Bell, 1 Jones Eq. 234, June 1854. "I bequeath that after my death, that my negroes, land, and every species of my property be sold,"

Earp v. Earp, 1 Jones Eq. 239, June 1854. [240] "she did endeavor to escape from his brutality . . but she was at the command of her . . husband, carried back to his house by his servants."

Lucy Thomas v. Palmer, 1 Jones Eq. 249, June 1854. Will of Nathiniel [*sic*] P. Thomas: "My mill tract . . and the Crowder tract . . I . . devise to my executor, to be sold . . and the proceeds[1] . . to be placed at interest, after investing a portion . . in purchasing a suitable home for my mulatto woman, Lucy, and children, purchased of the trustees of . . [250] Crowder; the interest . . to be appropriated towards their support, . . My mulatto woman, Lucy, . . I . . bequeath, to . . Palmer, together with her [three] children, and any other children that she may have, in trust . . that he will provide for them a suitable home, as aforesaid, and for her support, and that of her children, until they are able to support themselves, out of the proceeds of the real estate aforesaid. . . it being understood that the said woman and children are not to be removed from the county . . without her free will and consent, and a copy of this will recorded in the clerk's office of the county, to which she may remove." Codicil: "In the event that the laws of North Carolina, or the policy of the same, as construed by the Supreme Court, shall present any obstacle to the fulfillment of the trust . . I . . direct my executor, to send them to such State, territory or country as she may select, and he may think best, and I do hereby charge my estate with a sum sufficient to provide for their removal . . and for their comfortable settlement there; it being my will . . that she shall not be continued in slavery." [251] "Lucy . . removed with her children to . . Ohio, where they . . are . . free persons. . . allege that by their own exertions, and by the partial aid of Mr. Palmer, the executor, they were enabled to get to Ohio, but that they have not been provided with a home or settlement . . and that they are in want, and destitution, and that the children being small, the mother is unable to support herself and them, without the assistance of the fund provided in the will. . . The answer of the executor . . says . . that he has already advanced funds . . to assist them in removing . . and that as soon as the condition of the estate will allow, he intends to

[1] About $1500.

provide for a comfortable settlement of them in Ohio. . . submits to the . . direction of this Court"

Held: they are not entitled to the fund produced by the sale of the two tracts of land: [253] "The provision made by the codicil is intended as a substitute for that made by the will—'*in the event*,' that the latter cannot be carried into effect."

Newland v. Newland, 1 Jones N. C. 463, August 1854. "I . . bequeath unto my wife . . two servant boys, . . to have and to hold, and to expose [*sic*] of at her own discretion, while she lives and at her death, so as not to be disposed of out of the family,"

Held: [468] "the restrictive expression is . . void."

State v. March, 1 Jones N. C. 526, August 1854. [527] "he was asked if he had not committed . . perjury in Georgia, by swearing that he had not brought negroes into the State,"

Wilson v. Hendricks, 1 Jones Eq. 295, August 1854. "he agreed to take a negro girl about eleven years old . . at the price of $525, . . a written warranty . . that the slave was sound except that she was a little near sighted. . . The bill . . sets forth that the negro girl . . was unsound at the time of the sale, being affected with consumption, and that in about twenty months thereafter, she died of that disease; . . [296] The answer . . denies that the slave . . was unsound . . or that she died of consumption, but avers that she died of pheumonia [*sic*], contracted long afterwards,"

Jones v. Perkins, 1 Jones Eq. 337, August 1854. [338] "one negro girl, . . about ten years old, valued [in 1845] about three hundred and seventy-five dollars,"

Love v. Neilson, 1 Jones Eq. 339, August 1854. "it was agreed . . that plaintiff should build a saw mill . . [340] defendant to make no charge for the work of his hands"

Tarkington v. McRae, 2 Jones N. C. 47, December 1854. [48] "for twenty-five years . . the hands belonging to the plantation . . had . . obeyed the summons of the overseers [of the road] and had worked on this part of the road, . . under the direction of the . . overseers."

State v. Samuel Jacobs, 2 Jones N. C. 52, December 1854. "order of the County Court . . January Sessions, 1851, viz: . . 'that the Sheriff . . leave a written notice at the respective dwelling houses of (fourteen persons, . . among whom was the defendant [a free negro], informing said persons that representation has been made to the Court that they are colored persons, and have come into this State contrary to law,[1] and unless they leave . . within twenty days . . they will be proceeded against' . . At the ensuing Term . . returned . . endorsed . . 'Executed by leaving notice at the dwelling houses of, or delivering to the persons of Samuel Jacobs, etc., (naming nine others,)' . . July Term . . the following proceeding was returned . . 'To the Sheriff . . You are hereby

[1] Act of 1836. Rev. St., ch. 111, sect. 65.

commanded to take the bodies of Meredith Jacobs, Samuel Jacobs, senr., and Samuel Jacobs, junr., . . and have them before . . justice of the peace, to answer a charge of having migrated into this State, and of having failed to depart . . [53] within twenty days after having been duly notified to do so,' . . (Signed by two Justices of the peace.) . . 'Meredith Jacobs and Samuel Jacobs, senr., appeared before us . . July, 1851, and after hearing the evidence, [we] bind the defendants over to our next County Court.' (Signed by two other Justices of the county . .) The defendants . . regularly appeared from term to term until October Term, 1853, when the defendant craved a trial by jury and pleaded—1st. That the 65th, 66th, and 67th sections of the Act of 1836, are unconstitutional. 2nd. That three years had elapsed after his coming . . before this proceeding was begun. . . 4th. That he is not a free negro or mulatto within the fourth degree. . . 6th. That he is a native born citizen of North Carolina, and has never forfeited his citizenship by migration from the State. . . the case transferred . . to the Superior Court . . a jury . . found the second [issue] . . in favor of the defendant, and the others in favor of the State. The Court . . was of opinion that the cause . . was barred by the Statute, and declined giving judgment for the penalty of $500,"

Affirmed: [54] "there is a preliminary objection . . which is fatal to the proceeding. . . from this return, it does not appear . . distinctly that the notice to leave the State, within twenty days, was served personally on the defendant. . . [55] The act is a highly penal one . . construed strictly. . . The time is short, very short, . . The leaving the notice . . presupposes that he is not there . . He . . may not return until the greater part, if not the whole of the twenty days, has expired. . . The Legislature never intended to act so oppressively towards a race to whom stern necessity has compelled it, in other respects, to deny so many of the privileges of freemen." [Battle, J.]

State v. Hester, 2 Jones N. C. 83, December 1854. "indictment for stealing a slave, . . The defendant was found guilty . . [84] his Honor refused a new trial,"

Banks v. Richardson, 2 Jones N. C. 109, December 1854. "Action . . for words published through the Telegraph," [110] "Portsmouth, [Virginia,] Jan'y 28, '52. Mr. Flanagan, Weldon: Two men by name James Banks and a Mr. Beach has ran off with two small negroes: please have them arrested: . . be sure and stop them. I pay all expenses."

Flanner v. Moore, 2 Jones N. C. 120, December 1854. "Petition for the sale of a slave, for partition,[1] . . The slave [had been] sold to . . a partner . . in a tannery . . he had been put to work at that business,"

Joiner v. Joiner, 2 Jones Eq. 68, December 1854. Will: [69] "to my son Noah . . the cooper Joseph, . . and James." Codicil, three years later: "that Robert Hines have . . the boy James" The testator

[1] Act of 1829, ch. 17, re-enacted in 1836. Rev. St., ch. 85, sect. 18.

owned two negroes by the name of James: "one . . was a valuable young man. The other . . was very old, supposed to be near one hundred, and not only without value, but an expense."

Held: [73] "we cannot . . believe that a father would mock his son by giving him, as an apparent bounty, an old negro, who was . . a burden"

Hurdle v. Outlaw, 2 Jones Eq. 75, December 1854. See Outlaw *v.* Hurdle, p. 178, *supra.* "the plaintiffs as next of kin of David Outlaw, . . [76] allege that among the slaves bequeathed to the defendant, there were two who were to be emancipated . . that . . David had, in his lifetime, often so declared, and that the defendant, shortly after the death of the testator, in a letter . . promised to effectuate this purpose, but that since . . has made sale of one . . They allege their willingness that this slave may still be emancipated, and that the defendant may be compelled to re-purchase him for that purpose, but . . if this cannot be done, and this trust shall be considered . . void, that he may be compelled to account for the value of these slaves to the plaintiffs."

Bill dismissed: [78] "They have no such interest in the emancipation . . as will sustain a suit for that purpose in their names."

Cohoon v. Speed, 2 Jones N. C. 133, June 1855. "Matthews, the town constable . . applied to . . the justice, for a warrant to search for, and arrest a runaway slave, supposed to be concealed upon the premises of the plaintiff: the warrant was issued, . . Matthews . . broke open the door of a stable"

Weatherly v. Miller, 2 Jones N. C. 166, June 1855. "The plaintiff had purchased from the defendant a slave for himself and his father, who were trading in slaves as partners, and having put hand-cuffs upon him, the defendant told him the slave was honest, and that if he would remove the hand-cuffs he would guarantee to him one hundred dollars if the slave should run away. The hand-cuffs were . . removed . . He ran away that night. The plaintiff immediately posted up hand-bills, making known the escape . . some of them in the neighborhood of the defendant; but did not call on the defendant to make a demand of the $100, or to notify him of the slave's escape. . . Verdict for the plaintiff."

Judgment thereon, reversed: [168] "he was entitled to personal notice"

Watkins v. Pemberton, 2 Jones N. C. 174, June 1855. "There were no debts . . beyond what could be paid out . . of the other personal property, but the administrator, deeming it the most convenient mode of settling with the distributees, applied for an order to have the slaves of the estate sold: there were thirty-one slaves; and . . eleven distributees, . . seven . . opposed the order, and on its being made, appealed to the superior court. . . [175] judgment below . . reversed;"

Shelfer v. Gooding, 2 Jones N. C. 175, June 1855. Action of slander. [176] "The defendant's slave had been brought before two justices of the peace at the instance of the plaintiff, upon a warrant, charging him

with destroying his (plaintiff's) property. Upon the trial . . the defendant being called on by the magistrate to know if he wished to be heard in behalf of his slave, said, addressing himself to the justices, . . 'what Amos Shelfer . . has sworn, is a tissue of falsehood and a damned lie from beginning to end.' . . The defendant's counsel contended that defendant acted as counsel in behalf of his slave and was privileged . . not . . liable, unless . . he used the occasion . . to gratify his malice; . . Verdict for the plaintiff."

Judgment thereon, reversed: [184] "What he said of the plaintiff was *relevant* and *pertinent* to the defense which he had a right to set up for his slave, and no malice could be inferred from it."

State v. Williams, 2 Jones N. C. 194, June 1855. "Indictment . . for petty larceny and for trading with slaves, . . Watt . . testified that . . he learned that tobacco had been taken out of one of his barns: . . saw the tracks of two persons which he followed to the plantation of . . Neal; . . thence . . to the fence of the defendant, thence . . to his house, finding on their way two leaves of tobacco. Before leaving the plantation of Mr. Neal, they made an examination of his slaves, and found that the shoes of . . Iverson and Henry, exactly fitted the track, and upon being charged, these slaves confessed that they had stolen the . . tobacco. On meeting with the defendant . . the witness . . 'asked him if he was aware that it was contrary to law to trade with negro slaves, for property which was their own, without a written permission from the owner or manager?' he replied, 'he did, and had not traded with any, he had quit that thing.' I then told him that the tobacco he got on Sunday night was my tobacco, and not the negroes'. . . [195] that . . Iverson and Henry, had confessed . . that they . . delivered it to him at his kitchen, which he denied. . . I then told him . . the negro [Iverson] said besides . . defendant asked him if he had any tobacco to sell, that it was easy to get good tobacco and that he would give a good price for good tobacco; . . defendant replied that 'it was an infernal lie.' . . I told him . . [196] that I . . should be compelled to prosecute him. He then . . requested me to go up the road with him; . . came to a barn . . He unlocked the door . . I said 'Williams, that is my tobacco, pointing to a pile on the right of the door.' He said 'yes, and that over there,' . . He remarked . . that the negroes had told me a lie; for he did not see them that night; that they brought the tobacco and put it down by his barn, and that he got it the next morning. . . Iverson owed his wife for making him a shirt, and was to pay for it in tobacco, but he supposed with his own tobacco, . . the defendant paid me for my tobacco and asked me not to prosecute him.' . . [197] Verdict of guilty of petit larceny: and not guilty on the other count." Judgment thereon, affirmed.

Mayo v. Whitson, 2 Jones N. C. 231, June 1855. "an appeal . . from a judgment . . affirming an order of the County Court . . to amend a former order of that court. The applicants for this amendment are free persons of color. They had been the slaves of Major

Absolom Tatom, but supposing they were duly emancipated by his will,[1] and by the action of the court at Feb. term, 1803, . . they have ever since . . acted as free persons, . . and accepted as such, in the community . . Not long before the date of this application, it was discovered that no order for the emancipation of the slaves . . had been entered on the minutes, or on any other record . . and several of the descendants of these persons were seized as slaves by the assignees of the next of kin of Absolom Tatom. Thereupon, the plaintiff filed his petition and gave notice to Pearce and Whitson, and the next of kin . . that he would apply . . for an amendment of the record, *nunc pro tunc*, so as that it should set forth, at February Term, the decree emancipating . . Upon a motion in court to make the amendment . . affidavit of Duncan Cameron was offered . . 'Statement made . . 1851. . . he wrote the will . . December, 1802, . . Tatom being . . a member of the General Assembly, . . he directed said slaves to be emancipated for meritorious services, rendered to him. . . the executors united in an application to the county court to emancipate said slaves; the court . . ordered the said slaves to be emancipated. This affiant drew up the decree . . and handed it (to) . . Clerk . . and directed it to be entered . . as a record . . always supposed such entry was made, . . Affiant, who was one of the executors, never regarded them as assets' . . [233] At the May Term, 1854, . . the following Order was made and entered on the minutes of the county court . . 'In the matter of George, Cate, . . on motion, and on the affidavit of Duncan Cameron, deceased, and upon the admission that the aforesaid negroes and their descendants have always been reputed free negroes . . [234] since the decree of emancipation . . until the capture of James Mayo, in 1853, . . who instituted suit therefor . . now pending in the Superior Court . . and that the estate of said Tatom was settled . . in 1825, without any claim on account of said slaves, . . It is ordered . . that the records of this Court, . . 1803, be amended by the entry, *nunc pro tunc*, of the decree for the liberation of said slaves,' . . From this order . . an appeal was taken to the superior court . . his Honor was of opinion that the record of the county court ought to be amended, as ordered . . [235] and that a writ of *procedendo* issue to that court."

Judgment affirmed: [239] "An aged man without . . any descendants . . is about to descend to the grave. Between him and his slaves exists a tie . . unknown to the master and the hireling: . . He does what he can to confer upon them the boon they hold most dear! Half a century passes away; . . it is discovered that the records are silent . . immediately, the birds of prey are upon the wing, . . It would indeed be a reproach to the law, if there were no way in which it could correct the evil, growing, in a measure, out of its negligence." [Nash, C. J.]

[1] [233] "I give . . to my friends . . my negroes, George, Cate, Sally and her child, with their future increase, young George, and Jack, . . in trust . . that they will use their best endeavors to procure them to be emancipated . . for meritorious services rendered me."

State v. Woodly, 2 Jones N. C. 276, June 1855. [277] "Spring Term, 1855. The jurors . . present, that Alfred Woodly, and Richard Wynns, free persons of color, . . did . . convey and conceal a certain negro slave, named Anthony, . . without the consent in writing of . . the owner, . . with the intent . . of carrying . . Anthony, out of the . . State,"

Held: [283] "the State was bound to prove the negative averment that the alleged offense was committed without the consent in writing, of the owner" "There is no statute of limitation against a prosecution for a . . felony, and it would be requiring too much of a person charged . . to hold him bound to keep a small piece of writing an indefinite number of years, at the peril of his life." [Battle, J.]

Brock v. King, 2 Jones N. C. 302, June 1855. "Action[1] . . for an escape of a runaway slave, . . The plaintiff . . was the owner . . he escaped from on board a steam boat on the Pee Dee river, in . . January, 1853; . . soon afterwards he was apprehended in the county of Robeson and delivered ['without the warrant of a justice of the peace, adjudging him to be a runaway,'] . . to the defendant, . . sheriff . . who committed him to the jail . . the body of the slave . . was found, about two weeks after . . in a well . . with marks of violence upon it, which produced the death of the slave. . . [303] Verdict for the plaintiff."

Judgment thereon reversed and a *venire de novo* granted:[2] [304] "he cannot be called upon for his defense until the plaintiff has shown that the statute liability has been incurred by the commitment of the slave under the warrant of the justice." [Battle, J.]

Winder v. Smith, 2 Jones N. C. 327, June 1855. Will, 1851: [330] "the whole of my servants to be treated well and provided for, except such as may become refractory and unruly, and if so, they may be sold."

Hairston v. Hairston, 2 Jones Eq. 123, June 1855. [124] "Hairston died in 1832, . . bequeathed to his daughter . . several valuable plantations in the county of Stokes, and also some seven or eight hundred slaves,"

Dunlap v. Hales, 2 Jones N. C. 381, August 1855. Letter: "The legatees . . holds [*sic*] against me a note to the amount of four hundred dollars, for two old negroes not worth ten cents. I will give them two hundred dollars to take them back, as they will not hire for anything, and they are always sick."

White v. Brown, 2 Jones N. C. 403, August 1855. "We promise to pay . . White for three boys, . . Ten Dollars per month, from 4th of January, 1853, until we finish our contracts on the Rail Road: the said White agrees to pay Dr.'s Bills, clothe them and make good lost time in sickness."

[1] Rev. St., ch. 111, sects. 11-13.
[2] See same *v.* same, p. 192, *infra.*

State v. Tom (*a slave*), 2 Jones N. C. 414, August 1855. "the indictment[1] upon which the prisoner was charged. . . 'did make an assault, and her [a white female], . . did beat . . with intention . . to ravish' . . [415] the cause was removed [from the county of Mecklenburg] to the county of Iredell for trial, . . prisoner . . convicted. A motion . . in arrest of judgment . . overruled,"

Judgment affirmed: [417] "the substitution of the word 'intention' for the word 'intent'" is not a sufficient ground for arresting judgment.[2]

Bivens v. Phifer, 2 Jones N. C. 436, August 1855. "My will . . is, that my executors . . shall sell my negro property in families, or at the discretion of my executors,"

Reeves v. Edwards, 2 Jones N. C. 457, August 1855. A negro woman was sold at auction, in 1838, for $500.

Johnston v. Overman, 2 Jones Eq. 182, August 1855. Sale, in 1841, "of a negro boy, at the price of $415,"

Madre v. Saunders, 3 Jones N. C. 1, December 1855. "The plaintiff declared for a breach of a contract of hiring, wherein it was agreed . . that the defendant was to have the boy Davy for one yeár, from the 2nd January, 1852, . . that the boy was not to be employed on water, nor at any fishery, and not to be carried out of the county. . . The slave . . [2] had gone to the river with defendant's horse, with his knowledge, but was directed by him not to ride into deep water. . . the horse . . got away from him . . The boy then proposed to . . Richardson, to let him ride his horse into the stream and wash him until the boys should come down and help him catch Saunders' horse; this Mr. Richardson permitted . . but cautioned him not to ride into deep water, as his horse was blind. He did, however, ride into the deep water, and was . . drowned. The boy was obedient, and at the time he was drowned (June, 1852) was worth $850. Perquimons river . . at this point, was shallow for a considerable distance from the shore. The boy's employment was to work about the lot of defendant and take care of the horses, (the defendant being the keeper of a Hotel in the town) and it was his practice to ride into water sometimes so as to wet the horses sides, at other times merely to wet their legs; . . with the . . approbation of the defendant, but the boy at the same time had his general instruction not to ride into deep water."

Judgment for the defendant, affirmed: "he was not employed on water. . . [3] The boy's life was lost by his own folly . . while he was . . without the knowledge . . of the hirer, engaged in the service of another person."

Gerkins v. Williams, 3 Jones N. C. 11, December 1855. [12] "Doctor Nixon . . deposed, that about a month before the sale . . he had attended . . for about two weeks, the woman in question, . . and that she had the dropsy. . . he told the defendant that she was unsound, . . advised him to get clear of her as soon as he could."

[1] Rev. St., ch. 111, sect. 78.
[2] Act of 1811. *Ibid.*, ch. 35, sect. 12.

Etheridge v. Corprew, 3 Jones N. C. 14, December 1855. "very old, and his mind so much impaired as to subject him to the entire control of his slaves;"

Midgett v. McBryde, 3 Jones N. C. 21, December 1855. [22] "Nancy Midgett, is a white woman, but her two children are mulattoes begotten by a negro father. The County Court made an order that these children should be bound to the defendant, who . . was a proper person in every respect to take such charge of them. The appellant, the mother, showed to the Court . . that for the last three years she has been living near her father, in a house built by him for her; that he has during that time taken charge of her children, and kept them diligently and industriously employed; that he is himself an honest, respectable and industrious man, well able to take care of her and her children, and willing to do so, and that she herself has, during the last three years, behaved orderly and industriously. . . his Honor . . affirmed the judgment of the County Court,"

Judgment affirmed: "That provision of the Statute [1] which relates to the occupation . . of the parents is confined to cases of free negroes and mulattoes whose children are legitimate. In such cases, if the parents have no honest or industrious occupation, the children may be bound out. These considerations do not arise when the child is a bastard." [Pearson, J.]

Murphy v. Merritt, 3 Jones N. C. 37, December 1855. Deed of gift [1839] to a grand-daughter of "my two little negroes, . . William, aged between two and three years; Kitty about six or seven months . . reserving . . unto myself, and to my wife . . the use . . during the term of our natural lives."

Brock v. King, 3 Jones N. C. 45, December 1855. See same *v.* same, p. 190, *supra.* "plaintiff declared for a breach of the contract of bailment . . [46] by means of blankets tied together, he had let himself down from the upper passage . . The cell in which the slave had been confined was a dungeon, set apart for the confinement of slaves; . . in the upper part of the jail, . . the defendant, as jailor, was in the habit of receiving pay for keeping runaways. The value of the slave was $700. . . [47] Plaintiff says such was the . . condition of the jail, that defendant ought to have chained the slave, . . Defendant says the slave was a mere runaway, not charged with any crime, . . Verdict for the defendant."

Judgment thereon, affirmed: [49] "the defendant . . could have done nothing more, unless he had placed a guard around the jail, or had put the slave in irons. The first . . too expensive, and the second cruel," [Battle, J.]

Freeman v. Hatley, 3 Jones N. C. 115, December 1855. Will of Dr. William Thornton, [116] "making various provisions for emancipating his slaves and their increase"

Hill v. Whitfield, 3 Jones N. C. 120, December 1855. [122] "begged Wm. not to sell the land; that if he must have money, to send for one of his negroes and sell him."

[1] Rev. Code, ch. 5, sect. 1.

Matthis v. Matthis, 3 Jones N. C. 132, December 1855. "1846, James Matthis, the father of the plaintiff, by parol, gave a slave named Bartee, to the plaintiff . . During the winter of 1846, Bartee was missing, and was thought to have run away, and plaintiff advertised him, and took out an outlawry before . . [133] justices . . which outlawry was posted . . Bartee was not heard of till 1853, when plaintiff, hearing he was in Georgia, . . found Bartee . . in the possession of . . McAlpin. Six months after he went again to Savannah, and returned with Bartee. The defendant was in Charleston in 1847, with Bartee, calling him Lewis, and sold him . . to . . McBryde, who sold him to . . Oakes, who sold him to . . McAlpin"

Lawrence v. Mitchell, 3 Jones N. C. 190, December 1855. [191] "shortly after the death of Betsy, the defendant took the three negroes [her children] . . (then quite young), to the testator, desiring him to take them back, since it would be a heavy expense to him to raise them; . . the testator replied, if he . . would raise them, they should belong to him."

Moore v. Love, 3 Jones N. C. 215, December 1855. [216] "three children of color . . had been bound to him by the County Court . . These persons left the employment of their master, . . and went into that of the defendant, . . about twenty-five miles off, . . The negroes were not concealed"

State v. Sewell, 3 Jones N. C. 245, December 1855. "Indictment for murder, . . the prisoner had shot an old free negro woman (aged about 60) in the eyes and face with a pistol. That about an hour afterwards he was found on a pallet with her, and there were indications that he had ravished her as she lay insensible. There was a jug of liquor on the same pallet. . . on the way to the jail, he begged the persons about him not to hurt him, . . At other times he asked them to hang him. . . [246] about two weeks before . . the prisoner . . had *delirium tremens* . . [247] verdict . . guilty of murder. Judgment . . pronounced," Affirmed.

State v. Robbins, 3 Jones N. C. 249, December 1855. [250] "the defendant was indicted for the murder of a negro slave belonging to himself," [252] "Jim . . was about sixty years old." [250] "the testimony of three step-children of the defendant, . . the eldest . . about seventeen years old . . heard the deceased ['between sunset and dark'] at the wood-pile, crying out, 'don't kill me,' and the prisoner cursing him, and saying, 'he intended to kill him.' . . beating the deceased with the handle of an axe, . . two or three times around the wood-pile, . . [251] the prisoner . . said 'why did you not' or 'you did not feed my horse,' to which the deceased replied, that he had fed the horse." [250] "He beat the deceased . . from thence to the barn, and from thence to the house, . . The prisoner . . striking the deceased with his fist on the side of the head, knocked him against the fire-board, . . the negro became speechless. . . the prisoner jumped on him, and stamped him for more than ten minutes; . . [251] all over; . . then called for

his wagon-whip ['of a large size, with a butt-end of wood covered with leather'], and with the butt . . beat the deceased . . for half an hour, . . then called for scalding water, and there being none, had water heated, and poured it on the head, back and sides of the deceased; . . then took salt, and putting it on the back of the deceased, whipped it into the flesh . . he heated water four or five times, and poured it on the deceased; . . this stamping, whipping . . and pouring . . continued without cessation until 9 or 10 o'clock at night. He then made the witness and her sister drag the deceased . . into the yard, . . the deceased died about 1 o'clock the next morning; and about 4 o'clock, the prisoner got up . . his family . . had all fled but Marth [about thirteen years of age]; that he made her assist him in dragging the body into his (deceased's) . . cabin; . . told her to shut the door and nail it up from the inside, and that she must come out by raising a plank of the floor; . . made [her] . . wash up the blood from the kitchen floor, and put sand on the floor;" That evening the coroner [252] "found the deceased in his cabin on a sort of bed or scaffold, dead; . . jaw-bone was broken, and his teeth knocked out; . . on the head, seven wounds, six on the front . . [255] 'guilty of murder.' Judgment and appeal."

Judgment affirmed: [256] "We adopt . . language of the Court, in . . State *v.* Hoover,[1] 'that nothing could palliate such a course of conduct.'" [Battle, J.]

Cromartie v. Robison, 2 Jones Eq. 218, December 1855. Will of General[2] James J. McKay, 1853: [219] "that the slaves ['I acquired by intermarriage . . those that I received in the division of my father's estate, old Joe and Ferryman Jim'] . . be hired out . . for two or three years, . . to raise a fund for their transportation to . . Liberia; and as soon as that object can be effected, my executors are . . strictly enjoined to take the requisite means, for the transportation . . under the direction . . of the Colonization Society."

Held: [224] "the clause directing emancipation, includes the descendants of the original stocks." [222] "The laws of our State allow old negroes[3] who are emancipated for meritorious services to remain here. . . if the intention was to liberate only the old negroes, why did the testator require them . . to be torn away from the place 'where they were raised,' and sent as exiles to Liberia? . . The purpose was to direct all the *family negroes,* in the largest sense of the words, to be sent to Liberia; and in so doing, he intended to aid . . the great and philanthropic purposes of the noble society to whose patronage he committed them. . . [223] Again, . . the hire of the old negroes will scarcely support them during the two years." [Pearson, J.]

Nixon v. Lindsay, 2 Jones Eq. 230, December 1855. "1851, her children became possessed of nine slaves as tenants in common. . . [231]

[1] P. 85, *supra.*
[2] 5 Jones Eq. 367.
[3] "over the age of fifty years," Rev. Code of 1854, ch. 107, sect. 49.

1852, . . commissioners . . valued the whole nine slaves at $4,600, each share being $1150. . . allotted to the plaintiffs . . two slaves, Gabriel, valued at $750, and Mary, at $400. . . Mary, was sick . . but it was believed by the commissioners, and others interested . . that the disease was but temporary, . . but it turned out, that she was at that time laboring under a deep and fatal disease, . . which occasioned her death in about two months . . notwithstanding the best skill, procurable in that community, was employed to attend her." Dr. Coffin, one of the commissioners, stated, [232] "that . . on the day of this partition, he heard Mrs. Jones say she had been unwell for some short time, but attributed it to exposure in sitting up with her mistress who had lately died; she then looked dull and stupid; in a short time afterwards, he was called upon to visit her, and found her afflicted with the scrofulous, sometimes called the African, consumption;" He says "he attended her up to the time of her death, and is satisfied that 'the first time he saw her, on the day of the division, she was laboring under the disease . . though he did not then suspect it.'"

Decree: [234] "The plaintiffs are entitled to contribution for the estimated value of the slave, and also for the necessary . . expense incidental to her last illness, and for loss of service:" [233] "In a partition of chattels, . . a warranty is implied . . of soundness;"

Pilkington v. Cotton, 2 Jones Eq. 238, December 1855. The master in equity [239] "reported that Nathan is [now] worth $1200; that he has been worth during the last six years $640 [in hires], making $1840; that the debt for which he was pledged is, with interest, $332.10, . . [240] The defendant excepts . . because the . . Master takes the highest price put upon Nathan by a single witness,"

Held: [241] "We concur with the Master, that if a negro boy, eighteen years of age, has such qualities and recommendations as will command a hire of $150 per annum, the value of the boy cannot be less than $1200; the opinion of a dozen witnesses to the contrary notwithstanding." [Pearson, J.]

Adams v. Gillespie, 2 Jones Eq. 244, December 1855. Held: [249] "for the purposes of a division, the girl must be sold;"

Parker v. Leathers, 2 Jones Eq. 249, December 1855. [250] "in 184—, . . the executors . . took the negroes . . and . . sold . . at public auction, for the purpose of distributing the value amongst the four children. . . Leathers, one of the executors, and one of the legatees, being anxious to own . . Jacob, by the consent of . . the other two executors, and of . . the only other person interested . . was permitted to bid . . He made the highest bid at $725, . . paid $168 . . [251] the defendant . . says, at the time of this sale, this slave was laboring under an incurable disease, of which he was not aware . . and which, notwithstanding the greatest care . . very soon ['in about 16 months'] terminated his life." [252] "the defendant refused to pay anything more, . . no fraud is alleged."

Held: "In a parol sale of personal property there is no implied warranty of soundness, and the defendant ought to have taken a written conveyance with a covenant of soundness. He has not done so, and must account for the price of Jacob, deducting the payment made by him."

Smith v. Turrentine, 2 Jones Eq. 253, December 1855. In 1854 Schoolfield "conveyed by deed to . . Smith, . . of Philadelphia, . . a negro woman . . aged about 27 years, . . for . . $800. . . the vendor . . agreed to hire the woman at five dollars per month, and . . [254] retained her in his possession . . Schoolfield was indebted to the plaintiff and his co-partners"

Hathaway v. Leary, 2 Jones Eq. 264, December 1855. [265] "that the slaves of the estate were hired out for several years, and that the income from that source far exceeded the expenses of the family;"

Grimes v. Hoyt, 2 Jones Eq. 271, December 1855. "In 1845, the Rev. Mr. Singletary conveyed to the defendant, by an absolute bill of sale, a slave . . Guilford [[274] 'forty-five years old'], reciting therein as a consideration, the receipt of $850, . . The defendant did not pay this sum in money, but . . gave . . five . . notes for $171.62, payable on credits of one, two, three, four, and five years, with a provision in each . . that if the said negro should die, or become permanently disabled before . . due, payment was only to be made, pro rata, up to the time of such event. Mr. Singletary died in less than a year . . Grimes . . qualified as executor." He filed a bill alleging that his testator, "being about to remove from the County of Beaufort . . and being much attached to the slave Guilford, who was an excellent servant in all respects, for the purpose of enabling him to remain in Beaufort county, where his wife and children lived, and . . [272] to purchase himself and be free without leaving the State, with the concurrence of . . Guilford and in pursuance of a promise made him, [[273] 'to convey him to any person whom the slave should select,'] entered into an agreement with the defendant, that he (defendant) 'was to have for his own use all the annual profits of the labor of the said slave for five years, and at the end of that time he (Guilford) was either to remain nominally the slave of the defendant, being permitted to have the use of his time and go at large as a free-man, or defendant was to convey him to his (Guilford's) wife, who was a free woman of color, (at the option of the slave,) for the same purpose;' . . The bill alleges that Guilford was worth a great deal more . . that the defendant, having received the profits of the labor of Guilford, who is a carpenter, for five years, by which he has realised $250 a year, or in the whole, $1200 [*sic*], has permitted . . Guilford ever since . . to go at large . . and only holds him in nominal servitude. . . has offered to sell the said slave for $650, with an understanding . . that when the purchaser shall have received that sum, . . the slave is to . . enjoy his freedom as he is now doing. . . that some small payments have been made on the notes . . but the same have been renewed . . have been on interest for six or eight years. . . averring that the said sale . . was . . against the policy of the State, offers to surrender the notes . . and the money paid . . prays that

the bill of sale may be declared void, . . [273] the defendant denies that he made any such . . agreement with the . . testator; but . . after the trade . . he did agree with . . Guilford himself, that if he would serve him for five years, and would make . . $1250, . . that he would liberate him; but denies that this emancipation was to be done in any other mode than that permitted"

Bill dismissed: [274] "The object of the testator was a benevolent one; but the mode resorted to, is contrary to the well-known policy of the State."

Brookshire v. Dubose, 2 Jones Eq. 276, December 1855. [278] "Newby and wife residing in Indiana . . having peculiar notions on the subject of slavery, became desirous of getting one of the slaves belonging to the estate, for the purpose of emancipating him, and caused suit to be brought [about 1842] . . in Alabama, for the slave allotted to them, and recovered him;"

Delap v. Delap, 2 Jones Eq. 290, December 1855. Will: "to my . . wife, . . [291] my negro man Tony, and my negro woman Elizabeth; . . after her death, or marriage, all to be exposed to public sale . . and the money . . and the offspring of the said negro woman (if any) to be equally divided among my children by my present wife. . . it is my will . . that . . Elizabeth and her daughter Milly are not to be sold, but to live with some of my children by my present wife, which ever they may think fit." Elizabeth and Milly "both died during the widowhood . . Milly left two children,"

Held: [293] "The mother and grand-mother being dead, and . . incapable of choosing . . the executor may permit one or more of the legatees, selected by and among themselves, to take the slaves . . upon paying a fair price for them."

Barwick v. Wood, 3 Jones N. C. 306, June 1856. [307] "1846, the slaves were taken out of the possession of the plaintiff [who claimed them under a bill of sale in 1837] by the defendant [who claimed under a bill of sale in 1846] . . in the night time, and carried South by the rail-road cars, and since then have not been heard from."

Bell v. Walker, 3 Jones N. C. 320, June 1856. [321] "an agreement, under seal, to take three negro slaves, . . and to teach them the ship-carpenter's and caulker's trade. The breach alleged was, that the defendants had not taught . . the said slaves the trades, . . evidence . . that the slaves were employed in the ship-yard of defendants as other apprentices of the same experience, and that no distinction was made between them and the others." Held: the evidence was irrelevant.

Harriet Owens v. Chaplain, 3 Jones N. C. 323, June 1856. "In 1851, the [colored] child . . had been bound at about the age of five years . . to . . Owens, a colored man, who kept her till . . 1854. In October . . Owens went on a voyage to the West India Islands, and has not been since heard from. The apprentice continued with his widow . . until some time during that year, when she was taken out of her custody by the

defendant. The usual order of binding was obtained by the defendant, . . No notice had been given to Harriet Owens . . nor was the apprentice present when . . bound to the defendant. . . a man of good character and a . . proper person to be entrusted with an apprentice. Judgment for plaintiff, that the indenture should be cancelled and the apprentice bound to plaintiff," Reversed.

Peavey v. Robbins, 3 Jones N. C. 339, June 1856. [340] "Plaintiff declared for a wrong . . done him, by the defendants as inspectors of an election, in refusing to receive his vote. . . a witness . . testified that . . the mother and grand-mother of the plaintiff . . were white women, . . that his father was a dark colored man with straight hair, and that his grand-father was a dark red-faced mulatto, with dark straight hair. . . His Honor charged the jury, that if the plaintiff's grand-father was half and half, . . the plaintiff would be within the fourth degree, and could not recover. Further, . . the inspectors were constituted the exclusive judges of the voter's qualifications, and were not responsible for mere error in judgment." Verdict and judgment for the defendants. Affirmed.

State v. Jim (a slave), 3 Jones N. C. 348, June 1856. "Indictment for assault on a white female, with intent to commit a rape, . . the prisoner's counsel offered the wife of the master of the slave, as a witness in his behalf. The State objected . . by reason of interest; . . excluded . . Verdict for the State."

Judgment thereon, reversed and *venire de novo*: [351] "dollars and cents should not be weighed in the balance with life. . . the rule of exclusion, because of pecuniary interest, has not been applied to a case like the present, and . . is not applicable. . . The slave is put on trial as a *human being*; . . Is it not inconsistent, in the progress of the trial, to treat him as property, like . . a horse, in the value of which the owner has a pecuniary interest which makes him incompetent as a witness?" [Pearson, J.]

Gwynn v. Setzer, 3 Jones N. C. 382, June 1856. [383] "Received . . ten hundred and seventy-five dollars, in full payment of a negro boy . . aged twenty-two; which boy I warrant the right and title to, and warrant nothing further . . 1853."

State v. Patrick (a slave), 3 Jones N. C. 443, June 1856. "The defendant was charged with the murder of . . Green; and . . John W. Fornes was in the same bill charged as an accessory before the fact. The slave was tried alone. 1. On the trial, one of the *venire* who was not a slave-owner, was drawn, and . . was accepted . . After the . . conviction, the counsel moved for a *venire de novo*, . . [444] The defendant offered evidence . . that the deceased had declared . . that he was afraid of . . Fornes, and expected he would kill him yet. . . ruled out . . The counsel for the prosecution offered the confession of the prisoner, . . made under the following circumstances: . . About sun-set . . [Ventres] met the prisoner on the path . . from the house . . of the deceased," "about 8 o'clock . . he saw the body of the deceased lying on

the path, . . having gun-shot wounds . . He saw [Patrick] . . again about mid-night upon the witness' plantation, where he (Patrick) had a wife, and asked prisoner if he had heard a gun, and where he was . . He answered that he did, and that he was at the Puncheen branch . . about half a mile from . . Green's body . . Next morning this witness . . discovered a plain track near by [the body], . . the print of the half-sole, with tacks all around it. About ten o'clock that night, the defendant was arrested under a warrant, and tied; . . asked why . . Early next morning the officer . . went to notify the owner, . . Witness . . took Patrick to the place where Green's body was lying, . . made him take off his boot, and putting it into the track, '*it seemed to fit precisely.*' He then said . . [445] 'you might as well tell all about it, for I am satisfied;' he denied it, and the witness being a little angry, said . . 'if you belonged to me I would make you tell.' . . still denied it. . . After breakfast he went to . . Patrick . . in his wife's house. He then said to witness, 'did you ever catch me in a lie?' to which he answered, 'no, not about your work.' Patrick said: 'Are you afraid to go one side with me?' Witness said, 'no.' . . Patrick still having his hands tied, . . They crossed the fence and sat down on a log. [[448] 'when he made the confessions'] . . this witness . . owned Patrick's wife, and . . had hired him for two or three years preceding . . that he was the father-in-law of the deceased. . . he could not say that he had not repeated . . half a dozen times, 'You might as well tell all about it, for I am satisfied.' . . Patrick did not . . lie down" the night he was arrested. "Thomas Fornes, said that . . the preceding witness, accused the prisoner of having threatened the life of a slave belonging to him, to which he replied, he reckoned that must have been when he was drunk, and had a quarrel with Alex. . . the coroner, said that, on the examination of the body, Patrick confessed that he had done the act, and gave the minute particulars . . [446] said no influence had been used to get him to confess, nor was any caution given him. . . the prisoner was treated kindly. . . His Honor . . permitted . . Ventres, to state the prisoner's confessions. . . guilty of murder. Judgment was pronounced,"

Affirmed: "The slave stands at the bar, clothed with the same privileges that the white man enjoys, and the trial is conducted by the same rules. . . [447] The time . . to make his challenge, is . . before, the juror is sworn, . . [450] There was no error in receiving [the confessions.]" "the prisoner seems to have made his own calculations [[449] 'of the advantages to be derived from confessing']." [Nash, C. J.]

Howerton v. Wimbish, 2 Jones Eq. 328, June 1856. Will, 1816: [329] "In case it should be more convenient to my . . wife to have the . . land, and even the negroes sold, (the latter, however, I suppose she ought to keep, as she will have two-thirds during widow-hood, and one-third in fee,) she is at liberty to do so, as she will have ample money to purchase elsewhere."

Holmes v. Holmes, 2 Jones Eq. 334, June 1856. "The plaintiff had put a free negro of bad character, by the name of Bob Valentine, in

charge of the mill, who was strenuously objected to by [his mother] . . and was, by her, turned out of it, and a slave of her own . . put in his place; this slave was, in turn, driven out by the plaintiff, and Bob replaced."

Haughton v. Benbury, 2 Jones Eq. 337, June 1856. His [338] "interest . . was sold [in 1842] at public auction, to . . Benbury, . . at less than their real value, and immediately sold by him to a speculator, with a view . . that they should be carried beyond the limits of this State, and with the intention of defeating the contingent interest of the plaintiff. . . the slaves [were] immediately carried out of the State to parts unknown to the plaintiff."

Kea v. Council, 2 Jones Eq. 345, June 1856. In 1835 Kea borrowed $925 from his sister, Sabra Council, "and to secure the payment . . executed . . an absolute bill of sale for . . Molly, and her child, Henry; and subsequently, upon a further loan, . . a like bill of sale for . . John, the child of Molly, and Jack, her husband;"

Jones v. Gordon, 2 Jones Eq. 352, June 1856. Will of Maria L. Gordon, 1854: [353] "I give my negro man, Jack Blount [[355] 'a favorite negro'] to my brother . . he knowing that I so give him, that Jack may enjoy every comfort. . . I give all my other negro slaves to the American Colonization Society, provided the said negroes are willing to go to Liberia, and provided the Colonization Society is willing to receive them and send them to Liberia." "The slaves embraced in this latter clause, had expressed their willingness to go, and the . . Society had signified its willingness to accept the trust of sending them to Africa."

Held: [355] "the bequest of emancipation extends, not only to all the slaves of Mrs. Gordon and their increase held by her in severalty, but also to the slaves which may be allotted to . . her representative, upon a partition"

Lowe v. Carter, 2 Jones Eq. 377, June 1856. Will: [379] "I loan to my daughter Sarah . . Carter, . . Peter, and his wife Mary, and their four children, . . and their increase; and at the death of . . Sarah Carter, . . the aforesaid slaves, with their increase, descends to the bodily heirs of . . Sarah Carter, . . that the following negro slaves . . shall be hired out in this section of the country . . for the benefit [of my grandchildren] . . until the youngest shall arrive at the age of twenty-two years; . . [380] then . . equally divided between all my said grandchildren, . . that the slave Harriet, and her child Cina, be sold, as it is her request, to the highest bidder. . . Item 13th. It is my desire that the personal property . . be sold," The executor "sold Harriet and her child Cina . . for $1000. . . Of the slaves loaned to Sarah Carter, . . Mary, was delivered of a female child [Nancy], between the date of the will and the death of the testator. . . [381] Some years before the death of the testator, he . . delivered to his son Thornton . . Lucy and her four children, . . Thornton took these slaves to Georgia, where he resides, and where he still has them. . . also gave . . to his son Archer, . . Silvia and her four children, . . also Henry, who took them to Mississippi and sold them."

Held: [385] "Mrs. Carter does not take a life-estate in Nancy, . . The word *increase*, is not coupled with *future*, she, therefore, did not pass to Mrs. Carter with her mother and the other children, but is included in the 13th item, and is to be sold." [Nash, C. J.]

Brown v. Godsey, 2 Jones Eq. 417, June 1856. "Lytle, being insolvent, sold all of his slaves for cash,"

Woods v. Woods, 2 Jones Eq. 420, June 1856. Will: [422] "I . . desire, that all my negroes, not mentioned . . shall be sold after my death," [425] "the husband . . took possession of the slaves bequeathed . . carried them to . , Mississippi, more than twenty years ago, where they have been ever since."

Murrell v. Weathers, 3 Jones N. C. 525, August 1856. Covenant: [526] "Murrell . . hath . . sold unto . . Weathers, one negro woman . . aged from forty-two to forty-five years . . for . . two hundred and twenty-five dollars, . . The condition . . is such that, if . . Weathers ever wished to dispose of the . . woman, that he is to give . . Murrell the refusal . . and . . Weathers further binds himself, not to ever sell . . to any speculator whatsoever," The defendant "loaned the slave . . for a week, to his son, . . about twenty miles distant . . in South Carolina, to assist him upon his farm; from thence she was removed by his son to . . Alabama, and sold, without the knowledge . . of the father."

Fulenwider v. Poston, 3 Jones N. C. 528, August 1856. "Action . . for a deceit . . the plaintiff, who was a trader in slaves, had been to the defendant's house, and had an interview . . in relation to purchasing the slave . . some three weeks before the trade . . [529] that on the day before the trade, he took with him a practicing physician . . to . . examine the slave. . . met . . Elliott, who informed them that he had heard the slave had some 'religious monomania,' and 'occasional spells in the head.' . . the defendant . . tendered . . the following bill of sale, 'Received . . eight hundred and fifty dollars, . . for a negro boy . . aged 33 years, the title of which I . . warrant . . but don't warrant him to be sound in any way whatever,' . . The trade was then concluded . . The only deficiency of the slave . . was a peculiar religious fervor, for which two physicians testified, 'there was no name in the medical books, and the symptoms of which manifested themselves in actions and motions of the head, which . . depreciated his value.' They considered the negro unsound, and the disease an affection of the nerves and brain. . . [530] Verdict and judgment for the plaintiff." Judgment reversed, and a *venire de novo*.

Sparkes v. Kearney, 2 Jones Eq. 481, August 1856. [484] "three of the slaves, Hardy, Henderson and Stephen, were, by the trustees, put to trades, and kept working at the same for two years."

Held: [485] "As trustee to sell the property for the payment of debts, it was no part of his duty to have the slaves instructed in trades. There is no testimony to show that either of the said slaves, except Hardy, was increased in value by these means;"

State v. Freeman, 4 Jones N. C. 5, December 1856. Indictment for arson. "The prisoner . . is a free woman of color, . . indented servant of Mr. Whitfield. . . [No] direct evidence of the prisoner's guilt."

State v. Burk, 4 Jones N. C. 7, December 1856. "Indictment for harboring a runaway slave,[1] . . the slave had run away . . on Saturday, and . . on Monday . . the owner proceeded, after night, to the house of the defendant, and knocked several times without any response; . . then threatened to break the door, when the defendant . . opened it. . . the witness . . found his slave under the defendant's bed. He asked . . why he had his boy harbored, when he knew he was runaway; he answered that the boy had come to him that night, and asked . . to . . stay there till morning, when he was going to give himself up to his master. . . Verdict and judgment for the State." Affirmed.

State v. Bond, 4 Jones N. C. 9, December 1856. Special verdict: "That a slave, . . 1855, in the night time, about . . 8 o'clock, went to the shop of the defendant, . . and received from the hands of a slave, belonging to the defendant, a small tin bucket, containing one quart of whiskey, . . that the defendant was not present . . that the defendant's slave . . had authority to weigh, measure and deliver, goods sold . . to customers other than slaves, but not to receive payment." Judgment in favor of the defendant.

Affirmed: [10] "The 90th section of the 34th chapter of the Revised Code, . . enacted . . 1854, . . was not to go into operation until . . January, 1856, . . if the section . . were intended to operate upon cases like the present, . . it is an *ex post facto* law"

State v. McDonald, 4 Jones N. C. 19, December 1856. Indictment for murder. [20] "A negro woman asked the prisoner if he had given the deceased any notice that he was going to shoot him; to which he replied, yes, my gun snapped. . . the widow of the deceased . . directed a negro woman to wet the lips of the deceased with water; the prisoner struck her a blow on the head with his stick, which brought her to her knees. . . a second blow on the head."

Phillips v. Murphy, 4 Jones N. C. 45, December 1856. Covenant: "Know all men by these presents, that I, Robert Mills [free negro], . . in consideration of sixty dollars, to me in hand paid, . . [46] have . . sold . . unto . . Nixon, his executors and assigns, my active services, as a servant, for the . . term of five years, and the . . entire control of my person and labor during that entire time." After the execution of this instrument, "Mills was, against his consent, put into the possession of . . [Murphy's] intestate, . . by the plaintiff, as administrator of . . Nixon, and the bond, declared on, taken as the consideration of such transfer of the said Mills." [45] "Six months after date, we . . promise to pay . . administrator of . . Nixon, . . one hundred and twenty-five dollars . . in hire of . . Robert Mills, for the term of four years, or so long as . . Nixon was entitled to the services of the said negro."

[1] Rev. Code, ch. 34, sect. 81.

Judgment for the plaintiff, affirmed: [46] "There is nothing in the transaction against the policy of the law."

Carter v. Streator, 4 Jones N. C. 62, December 1856. In May 1855 Carter "hired himself and . . [his hired slave] John to . . Ragan, to work by the day;"

Harrison v. Bridges, 4 Jones N. C. 77, December 1856. "he had cultivated a sufficient number of pine trees, with two good hands which he had employed, to make six hundred barrels of *dip and scrape*; . . also employed, at short intervals, four or five other hands."

State v. Guilford (a slave), 4 Jones N. C. 83, December 1856. [84] "The prisoner was found guilty of murder, and a motion was made in arrest of judgment, . . overruled" Judgment affirmed.

Daughtry v. Boothe, 4 Jones N. C. 87, December 1856. "The action was brought for a breach of a contract of hiring. . . the auctioneer, testified that he . . publicly announced [December 25, 1852] . . as one of the terms of the hiring, that the slaves were not to be taken from the County of Gates; . . Jack was bid off by the defendant. . . May, 1853, the said slave was removed by the defendant to the County of Bertie, where he remained the balance of the year in a shingle swamp. He was restored to the [plaintiffs] . . in the beginning of . . 1854, in bad health, and died in January of that year. . . [88] Verdict for the plaintiff." Judgment thereon, affirmed.

State v. Privett, 4 Jones N. C. 100, December 1856. [101] "a clerk . . had furnished the spirits to the slave in the absence of the defendant."

Hatchell v. Kimbrough, 4 Jones N. C. 163, December 1856. "the defendant caused his slaves to go to the house in which the plaintiff lived with her children, and throw off the roof of the house, and haul it away"

Batten v. Faulk, 4 Jones N. C. 233, December 1856. "The plaintiff declared on a sealed note, for seventy-five dollars, made by one Andrew Shaw, a slave, and the defendant as his surety." Held: [233] "a slave can make no contract."

Powell v. Cobb, 3 Jones Eq. 1, December 1856. [2] "that he had beaten his wife with a horsewhip, and that a certain negro woman . . had often protected her mistress from the brutal violence of the plaintiff."

Fairly v. Priest, 3 Jones Eq. 21, December 1856. Will: [22] "in regard to the future increase of . . Silvia, . . that her first child be given equally to my three grand-children, . . that her second child be given to my daughter . . and all her future children . . to my son . . and his three sisters,"

Barnawell v. Threadgill, 3 Jones Eq. 50, December 1856. [52] "It was alleged . . that, in expectation that the plaintiffs would obtain judgment . . 1845, the defendants . . secretly carried off eighteen slaves belonging to the estate . . and sold them, or otherwise disposed of them, in . . South Carolina. . . The defendant Gideon B. Threadgill stated, that . .

[53] Jinny . . was . . levied on . . and sold, when he became the purchaser at $450, . . he sent [her and three others] . . to South Carolina, but not in the manner . . charged . . He also sent with them . . Smiley and her three children, which had been levied upon by . . sheriff . . and that he sold these slaves for the sheriff, . . Charles, was carried to South Carolina and sold . . [for] $500 . . The defendant Thomas H. Threadgill stated, that the testator . . his grand-father, had, in his life-time, given him . . Will, and to his father, . . Edmund and Franky, . . that he . . carried off . . Will and Edmund, and sold the former for $562,50; that while he was in South Carolina, his brother . . brought out . . Franky and her child Harriet, . . [54] The defendant George Allen stated, that he was present when the slaves, mentioned . . were carried off; that about ten days before that time, he had sent off into South Carolina, a little girl named Dinah, the child of . . Franky, and sold her for $300; . . The defendant Wilson Allen . . [was] the agent of . . Gideon B. Threadgill, to carry off his slaves, . . was paid $50; that he sold . . Judy for $430,25,"

Gilliam v. Underwood, 3 Jones Eq. 100, December 1856. Underwood's will: [101] "The negro man Joe is to have support out of my estate as long as he shall live."

West v. Sloan, 3 Jones Eq. 102, December 1856. About 1829 Sloan, trustee for his sister, sold [104] "Hannah and two children . . at public auction, when . . Stinson became the purchaser at $440 for the three. He, immediately . . relinquished his purchase to . . Sloan, . . and Sloan took the slaves home with him . . The defendants . . say . . that . . Hannah had become feeble, and, having two young children, she could not be hired for anything, and the best thing . . was to convert the slaves into money,"

Nash, C. J.: [106] "To call this a sale is a mere mockery."

Lea v. Brown, 3 Jones Eq. 141, December 1856. Will of Nathaniel Lea: [142] "The negroes bequeathed in this clause of my will, having been faithful to me and served me well, attended and nursed me in my long and painful sickness, I hereby bequeath to my friend Thomas J. Brown, . . my servant Milly, Mariah and two children, Nat and Dilla, Mary Anne and her child Milly, Vic and old Fanny, and such other children as they, or any of them, may have after the date of this my will, and I hereby enjoin on . . Brown, to take care of the said slaves, treat them kindly and humanely, as they have been to me faithful and obedient servants. . . that . . Brown shall have the use . . of the said slaves only during his life, and at his death, or in the event he should ever become . . unable to pay his debts without the sale of the . . slaves, then, . . [143] Milly, if alive, shall select a master, and all of the above-mentioned slaves I hereby bequeath to the person she so selects; and should she be dead, then I desire Mary Anne to make the selection, and should she be dead, I desire Mariah to make it; . . my chief aim and object being to give the aforesaid slaves good masters, if possible, or a small reward for their faithful service to me. I further bequeath to . . Brown, three thousand

dollars . . to pay the expense of keeping the said slaves, they being women, and can yield no profit of great amount. But should . . Brown become insolvent, or should die, then I bequeath the said sum, or such portion as remains unexpended by him, to the person that may become the master of the slaves . . as a compensation . . for their trouble in part. I give to . . Brown, two hundred acres . . during his life only, or in case he remains solvent; but should he die, or become insolvent, then my will is, that the said land shall go . . to such person as shall be, upon the happening of either of the said events, the master or owner of said slaves mentioned above. . . the remainder of my slaves [to my brother, sister, and the children of my deceased sisters] . . [144] there must be no sale for a division, as my desire is that all my slaves are to be kept in families as far as possible, and not to separate them unnecessarily. . . [145] I hereby strictly enjoin upon my executor to see that in the division of my slaves, families are to be as little separated as possible." [146] "it is said for Mr. Brown, . . Fanny was near sixty years of age, Milly, forty-five, Mariah and Mary Anne, each, twenty or twenty-five, and the rest small children, and the bequest being to him only for life, during which time they would probably be a charge, the use of the land and money was not an unreasonable provision."

Held: "had the testator tried *on purpose*, he could not have more directly violated the provisions of this Statute,[1] or more effectually contravened the fixed policy of the State." The provision for a successor to Mr. Brown "is unusual, and proves that the object was to confer a benefit upon the slaves, and that neither Mr. Brown nor his successor were the objects of the testator's bounty, . . [147] The result, if his intentions are to be carried out, will be to establish in our midst a set of privileged negroes, causing the others to be dissatisfied and restless, and affording a harbor for the lazy and evil disposed. . . [152] decree declaring that Mr. Brown holds the negroes and money in trust for the next of kin, and the land in trust for the heirs-at-law." [Pearson, J.]

Niblett v. Herring, 4 Jones N. C. 262, June 1857. "a boy about fifteen years old . . hired to the defendant for the year 1856, at the price of fifty dollars. . . the boy served . . about seven months, and then left . . There was evidence tending to show that the boy was taken away from the defendant by the plaintiff, against the will of the former . . [263] Verdict and judgment for the defendant," Affirmed.

State v. Harriet (*a slave*), 4 Jones N. C. 264, June 1857. Held: [266] "When a slave steals to an amount which, by the common law, would have constituted grand larceny, the offence is cognizable before a single justice, and the Superior Court is ousted of its jurisdiction by the express terms of the Act." [2]

Malloy v. McNair, 4 Jones N. C. 297, June 1857. Will of Niel McNair, 1855: [298] "I give . . to my daughter Jane . . Eliza and her son . . Eliza's other child, Minerva, will be set free, if she behaves her-

[1] Rev. Code, ch. 107, sects. 28, 29.
[2] Act of 1856. *Ibid.*, ch. 107, sects. 31, 32, 34.

self as a person of good character should do, to be under the care of my daughter Jane and her daughters, to be taught to read the new testament. Also I give . . a blacksmith."

State v. Hopkins, 4 Jones N. C. 305, June 1857. "after January, 1856,[1] . . the defendant, . . a free negro, being in company with Jack, a slave, . . at a house where spirituous liquor was usually sold, received from the . . [306] slave a small piece of money, with a request that, with it, he would purchase for him a quart of spirituous liquor, which he did, and immediately delivered it to the slave. . . Verdict for the State."

Judgment thereon, reversed: [307] "the defendant was but the conduit pipe to conduct the article" [Nash, C. J.]

State v. Wright, 4 Jones N. C. 308, June 1857. Same point as in the preceding case.

Rowland v. Rorke, 4 Jones N. C. 337, June 1857. "1852, sold a slave . . at the price of $670,"

State v. Whit (*a slave*), 4 Jones N. C. 349, June 1857. Indictment for burglary. [350] "that the defendant was a runaway slave when the smoke-house was found open ['about sun-rise, . . several pieces of meat missing, and the molasses running out']; that he had been arrested a few months before the trial, when, in consequence of his resistance, much violence was used upon him. He was cut in several places, bled much, and suffered much pain. While in this situation, he was asked if he was not the boy that broke into Dr. Smallwood's smoke-house. . . he replied he was. . . he was bound to have something to eat. . . no threats, or promises, to elicit the confession. . . [351] verdict of guilty."

Judgment thereon reversed and a *venire de novo* granted: [353] "there is neither direct, nor indirect proof that the entry was in the night." On the new trial, the prisoner was convicted.[2]

State v. David, 4 Jones N. C. 353, June 1857. Indictment for murder. [354] "The deceased had been employed . . as an overseer . . in Pitt County, . . for about two months. . . a witness . . saw a negro boy ['about dark'] riding off a horse, and mentioned it to the deceased, . . He was referred by one of the slaves to the house of Fanny and David, . . Getting a light, he . . called upon them to know where the horse was. Fanny . . said she had sent after an old woman. Deceased told her she ought to have asked him about it; . . she replied, that her master had permitted her to do so, and she intended to do it, as long as there was a horse on the plantation. The deceased said he suspected it was a jug of liquor she had sent for; . . she replied, 'it was a very big jug, and he would see when it came.' The deceased said he had a great mind to whip her for her impudence; she said he would not whip her that night. The deceased then took a rope out of his pocket, and told her to cross her hands. She said she would not. Deceased said if she did not, he would

[1] Rev. Code, ch. 34, sect. 87; *ibid.*, ch. 107, sect. 67.
[2] 5 Jones N. C. 224.

knock her down. She still refused, when he struck her with a stick, . . [355] She threw up her arms and received the blow upon them. David, . . then advanced and said, 'you ain't got to do so,' or 'you must not do so here.' . . the deceased turned . . and struck David a blow on the head with his stick, which brought him nearly, or quite, to the ground. . . Fanny struck him [the deceased] on the head with a pine-knot, . . which knocked him down. . . the boy, Mack, who had been standing at the door of the cabin, . . came forward with an axe, and said, 'clear the way.' The witness got over the fence to where the parties were—drew a pistol, and told Mack to go back into the house, or he would shoot him, whereupon he did go back . . the deceased was still on the ground, and David had one knee on the ground, as if in the act of rising; his right hand was on the handle of a maul, . . Violet, a slave belonging to the same plantation, testified that she heard . . Fanny, say, some short time before . . that if the overseer tried to whip her she would fight him. . . [357] The jury found Fanny and David guilty of murder, and Mack not guilty. Judgment and appeal by David."

Judgment affirmed: [358] "The accident that the prisoner was . . disabled at the outset, can in no wise relieve him of the consequences of his unlawful act. . . the deceased was doing no more than what he ought to have done much sooner." [Pearson, J.]

Couch v. Jones, 4 Jones N. C. 402, June 1857. [403] "Parker . . testified that Calvin was hired to the defendants [contractors] for the year 1853, and again for 1854, to work upon the North Carolina railroad, . . principally engaged in blasting stone out of the road-bed, and that he [Parker] was assisted . . by one other white man, and four slaves belonging to the contractors; . . February, 1854, . . after it was too dark to see fragments of falling stones, . . that Calvin assisted in loading the [six] drills, and touched the fuse of one . . with a lighted match; . . all ran off . . and had proceeded about a hundred and fifty yards, when Calvin was struck down dead by a falling stone, . . that it was not Calvin's business to attend to the blasting, but to dump carts, and before the matches were applied, Mr. White, . . superintendent, in a loud voice, gave notice to all the hands . . to remove their carts and leave, which was done. . . that Abner, one of the regular blasting hands, left after Mr. White came up . . and Calvin took his place; . . [404] that although a general order was always given by Mr. White for all the other hands to leave . . that Calvin had often . . assisted in loading and firing the blasts in the presence of Mr. White, . . White . . stated . . that he did not see Calvin at the drills, . . saw four hands . . and supposed them to be the four, whose duty it was to be there; . . Verdict for the defendants."

Judgment thereon, affirmed: [409] "The overseer . . had nothing to arouse his suspicions, so as to keep him constantly on the alert, to prevent Calvin . . from intermeddling in business with which he had no concern." [Battle, J.] Pearson, J., dissented.

Wallace v. McIntosh, 4 Jones N. C. 434, June 1857. "Action . . for a breach of warranty, . . The overseer proved, that more than once

[[435] 'when she abstained from field-labor'], the slave told him she had a falling of the womb, and in the last conversation, she added, that she would exhibit her person to prove what she stated. This latter . . testimony was excluded" Held: it should have been received.

Shaw v. McBride, 3 Jones Eq. 173, June 1857. Will: [174] "the deficiencies [for paying my debts] I want made up by hiring out [six male] negroes . . as long as may be necessary." "the slaves ordered to be hired out, will be insufficient, even if sold, to raise the required amount [about twelve thousand dollars]."

Held: they must all be sold. [176] "The creditors are not bound to wait" "for an indefinite period,"

Brown v. Pratt, 3 Jones Eq. 202, June 1857. [203] "Becky was stolen from them by their daughter Patsey;"

Vass v. Freeman, 3 Jones Eq. 221, June 1857. Will: [222] "my negroes, perhaps they had better keep,"

Hogg v. Capehart, 5 Jones Eq. 71 n., June 1857. Will of James L. Bryan, who died in 1856: [72 n.] "I give my slaves their freedom."

Held: I. it is the duty of the executor to free the slaves. "he is bound to execute all the trusts which are not forbidden by the laws of the State. . . bequest . . of their liberty . . is lawful; . . [II.] [73 n.] By the act of 1856, Revised Code, ch. 107, . . 47th section, . . the executor is authorised to send the slaves before emancipation here, to the State or country appointed by the testator, or in the absence of such designation [1] by him, to such State, or country, as the proper court shall direct. . . It is the policy of the State, that when slaves are emancipated, they shall be sent to the place from whence a return to this State is least likely. . . we appoint Liberia . . [III.] The hires of the slaves will constitute a fund for paying the expenses of their removal, and if it shall prove insufficient, the deficiency must be furnished out of the fund contained in the residuary clause. . . [IV.] liberty cannot be forced upon any of the slaves, who are of an age to choose for themselves. If any of them refuse . . they . . sink into the residuum. A commissioner must be appointed to ascertain from the adult slaves, who are willing to go to Liberia, . . and, if there are children under the age of fourteen, their parents must elect for them. If there are any who have no parents, or whose parents elect for them not to go, they must have liberty, on coming of age, to make their election." [Nash, C. J.]

Colvard v. Waugh, 3 Jones Eq. 335, August 1857. A negro boy was sold by the sheriff, in 1845, for $530.

Woodhouse v. McRae, 5 Jones N. C. 1, December 1857. "The owner of the slave lived in Currituck county, and the defendant, . . in Washington county, some seventy or eighty miles distant, the Albemarle sound lying between the places. The defendant, who had hired the slave for . . 1853 [1855?],[2] learning that the negro's master was sick, gave him per-

[1] The act says: "Whenever . . it may not be convenient to carry them to the place specially appointed, the court shall designate."

[2] Poyner *v.* McRae, p. 216, *infra*.

mission, in . . June to visit him. The slave did not proceed to Currituck, but was seen, shortly after . . in . . Norfolk, in Virginia, under the control of no one; since then he has not been heard of, . . the Court being of opinion that the plaintiff was not entitled to recover . . [2] he submitted to a nonsuit and appealed."

Judgment affirmed: "we are sure that the fact is, and therefore the presumption must be, that in the large majority of instances, under ordinary circumstances, the slave, an intelligent being, will prefer to remain with his master or hirer, rather than flee from him to another country. Now, if a master were to take his slave seventy-five or a hundred miles from his wife, would he hesitate to permit him to visit her at suitable times? Would he, under ordinary circumstances, think he was running any risk in sending his slave that distance upon any business that required it? We believe . . [3] that there is not one case in a hundred in which the slave avails himself of the opportunity of escaping into another State. If, then, an owner of ordinary prudence would feel no hesitation in sending his slave . . seventy or eighty miles from home, we cannot think the hirer . . where there was no special ground of suspicion, ought to be charged with a want of ordinary care in permitting the slave . . to visit his sick master, . . It will not do to say that under ordinary circumstances, one who hires a slave near the border of the State, must guard him by day and imprison him or chain him at night, to prevent him from fleeing across the line." [Battle, J.]

State v. Chavers, 5 Jones N. C. 11, December 1857. "The defendant was charged,[1] as a free person of color, with carrying a shot-gun. . . proved . . A witness proved that the defendant's father was a man of dark color and had kinky hair; that he was a shade darker than the defendant . . and his hair was about as much kinked. . . [12] Green proved that . . upon a steam-boat from Wilmington, . . the price of a passage for white persons was one dollar; . . the defendant handed him one dollar, . . to pay the fare of himself and his brother . . saying that he understood that the fare of . . colored persons [was] half price, and that he and his brother were colored persons, . . The defendant's counsel insisted . . that his client was a white man, and called upon the jury to inspect him . . The Court [Person, J.] charged the jury 'that every [free?] person who had one-sixteenth of negro blood in his veins, was a free negro. That the descendants of negro ancestors became free white persons, not by being removed in generation only, but by that, coupled with purification of blood, for if that was not so, then persons of half negro blood might, and would, become white persons by law. . . [13] My construction of the statute [2] is, that no person in the fifth generation from a negro ancestor becomes a free white person, unless one ancestor in each generation was a white person; that is to say, unless there shall be such a purification of negro blood by the admixture of white blood as will reduce the quantity below the one-sixteenth part; and unless there is

[1] Rev. Code, ch. 107, sect. 66.
[2] *Ibid.,* sect. 79.

such purification it makes no difference how many generations you should have to go back to find a pure negro ancestor; even . . a hundred, still the person is a free negro.' . . The verdict was against the defendant."

Judgment thereon, arrested: [14] "the charge . . lays down the rule correctly according to the statute. . . [15] The motion for a new trial being denied him, the defendant . . moves here in arrest of the judgment, because he is charged . . as 'a free person of color,' whereas . . the act . . makes it penal for any 'free negro' to carry arms . . Free persons of color may be . . persons colored bv Indian blood, . . [16] The indictment . . cannot be sustained." [Battle, J.]

Watkins v. Hailey, 5 Jones N. C. 27, December 1857. "action of trespass for an assault and battery committed by the defendant upon a slave . . of the plaintiff, . . verdict for two dollars damages, . . the Court adjudged that the plaintiff recover . . the further sum of two dollars for costs," [1]

Held: "as it [the action] is brought for an injury to the slave, as property, it is not . . technically . . the action for assault and battery. . . judgment . . also for full costs."

Harrell v. Norvill, 5 Jones N. C. 29, December 1857. "Received of . . Harrell twelve hundred dollars for negro slave Kennedy. . . I warrant sound in mind and health, and also . . the right and title" "The breach assigned was, that the slave was not healthy . . The defect . . was a fixed contraction . . of the little finger of each hand, to such an extent as to diminish the value . . one hundred dollars, which defect was not apparent. . . no soreness, or want of strength"

Held: there was no [32] "want of soundness in health."

Bell v. Walker, 5 Jones N. C. 43, December 1857. Covenant: "Walker and . . Herrington . . promise to . . keep, and employ . . Peter, Woden and Abbott, treating them well, four years, and learn them the ship-carpenter and caulker's trades, and give annually . . [to] Bell a note for one hundred dollars for each of the negroes, . . specifying that each are not to be employed by water, by steam-mill, or fishery, or to be worked out of the county, except bv permission of the owner, and to be furnished, etc." It was proved [44] "that the defendants owned a ship-yard at Plymouth . . that, during the [four years] . . Peter was kept at work in the yard, and a part of the time in cutting and hewing timber in the woods, for the use of the yard, and a part of the time in hauling; that he made progress in acquiring skill in the trade of a ship-carpenter, but was not put to the business of caulking at all, and that he was apt and docile, and was properly taught in the ship-carpenter's trade. . . that the other two slaves were kept at work mostly in the woods, in preparing timber and in hauling it to the yard; that they were put at caulking under other slaves employed in the yard, for two weeks, and at work on ships in the yard; that they were negroes of ordinary capacity; that they repeatedly declared that they would not learn the trade; that they were unwilling to be taught; that repeated efforts were made to instruct them; that they

[1] Rev. Code, ch. 31, sect. 78.

were taken away from several jobs, upon which they had been put, because of their bad work; and that they were kept at such work, relating to the business, as they could do to the best advantage. . . that the felling, hewing and hauling ship-timber was, in this section of the country, a part of the ship-carpenter's trade, and a preliminary training towards their acquiring the art. . . further, that the two slaves, Woden and Abbott, were but little, if in any degree, improved in the trade, but that Peter was well instructed in the ship-carpenter's craft for the time he had been at work, but that no effort had been made to teach him caulking. It was further proved that this trade would add $300 to the value of the slave. . . Verdict, $600 for plaintiff."

Judgment thereon, affirmed: [46] "it was . . the duty of the defendants to coerce [Woden and Abbott] . . by such means as the law allows to masters, to enforce obedience from their apprentices. . . The slaves were four years older, with habits of obstinacy increased by indulgence,"

State v. Henry (a slave), 5 Jones N. C. 65, December 1857. [66] "Indictment for an assault with an intention to commit a rape, . . The evidence . . seemed to be very strong against the prisoner, . . The prisoner . . had advanced evidence of his good character. His Honor . . charged . . 'that in a plain case a good character would not help a prisoner,' . . defendant excepted. Upon the trial, the defendant offered to show that the prosecutrix had, previously . . made an indecent exposure of her person to the other slaves of his master, but not in the presence of the prisoner. . . ruled out . . The prisoner was found guilty. Judgment was rendered,"

Judgment reversed, and a *venire de novo* awarded: I. in all cases, a good character is to be considered; II. the testimony concerning the behavior of the prosecutrix [70] "was irrelevant for any purpose, because it was not shown that the prisoner was informed of it."

Garrett v. Freeman, 5 Jones N. C. 78, December 1857. "The declaration was for the negligent act of defendant's slaves in setting fire to certain log-heaps in his new ground, whereby the fire escaped into the . . grounds of the plaintiff" Held: the master of the slaves was liable.

Young v. McDaniel, 5 Jones N. C. 103, December 1857. "Action . . for harboring a slave,[1] . . Holt, the agent of the North-Carolina Rail-Road Company at Salisbury . . testified that the week before Christmas, 1856, . . McDaniel, came to the station . . with a wagon, . . In unloading the wagon, he was assisted by Henry. . . said to witness, 'Henry belongs to Mrs. Young, and is going to South Carolina to see his wife; she put him in my charge; here is his pass,' . . Mr. Holt, without looking at the pass, gave the negro a ticket to Charlotte, for which he paid seventy-five cents. The defendant then said to Henry, 'now, we will . . camp, and have some supper . . before you start,' . . [104] the slave . . was gone until the middle of . . March. . . McDaniel was unable to read writing. . . Verdict for defendant."

Judgment thereon, affirmed: the act was not done secretly.

[1] Rev. Code, ch. 34, sect. 81.

McLean v. Waddill, 5 Jones N. C. 137, December 1857. Action [138] "for a breach of warranty of soundness . . a bill of sale . . 22d of January, 1852, in which were full covenants of warranty of soundness. . . in the latter part of January . . the slave was affected with a diseased liver, and of a dropsical appearance; his abdomen was much enlarged, and the witness, who was a physician, gave it as his opinion that the slave was unsound. . . could not say whether the disease was chronic or not. Another physician stated that the boy was affected with a stiffness in the legs and arms. The defendant proved that the plaintiff sold the slave . . at auction for $316; that the purchaser, after owning him for twelve months, and physicking him, sold him to . . McCoy, in Robeson, for $500; and that he afterwards sold for $800. . . Verdict for the plaintiff." Judgment thereon, affirmed.

Airey v. Holmes, 5 Jones N. C. 142, December 1857. [144] "Frank, valued at $1200,"

Baines v. Drake, 5 Jones N. C. 153, December 1857. Jack was sold, in 1856, for $900. He was "utterly worthless, . . had been unsound for years before the sale—was sick at that time, and died . . a few days afterwards."

State v. John (a slave), 5 Jones N. C. 163, December 1857. Indictment for highway robbery. In June, the prosecutor [164] "having sold the tobacco . . drove out of the town [of Milton] . . [165] he stopped to water his horses, . . about dark, a negro . . enquired which of the two roads near by he intended to travel; the witness told him, . . the negro passed on along the road indicated; . . the witness soon overtook the negro, . . travelled on together in occasional conversation, . . the witness sitting in . . his wagon, until the negro told the witness [about nine o'clock] that he had found a bill . . in the streets . . and he wanted him to . . tell him how much it was; . . a torch light was struck . . the amount of the bill excited his suspicions, and he took particular notice of the negro's face, his clothes, etc.; that while . . examining the bill, the negro's hand was felt in his pocket . . a scuffle ensued, in which the witness was thrown out of the wagon . . and when he arose the negro was running off, having taken the pocket-book from his pocket, . . contained . . two hundred and twenty-seven dollars; . . that the negro . . was a large and powerful-looking man . . that the prisoner was the negro . . The case below turned chiefly upon the identity . . [166] The prisoner was convicted, and, sentence of death having been pronounced . . he appealed."

Judgment reversed and a new trial granted: [170] "the facts . . do not constitute highway robbery." [Pearson, J.] Battle, J.: [171] "I do not entirely agree with him. . . however . . The absence of the Chief Justice . . leaves but two members on the bench, and my refusal to concur in reversing . . would have the effect to keep the prisoner in jail six months longer, which I am unwilling to do."

Osborne v. Mining Co., 5 Jones N. C. 177, December 1857. "March 20th, 1854. We do hereby hire to the High Shoals Mining and Manu-

facturing Company, the following [fifteen] negro slaves, . . for . . one year . . for two thousand four hundred dollars."

Cain v. Hawkins, 5 Jones N. C. 192, December 1857. [193] "Sam [worth $850] had been the nurse and constant attendant of John P. Hawkins, a son of the intestate, a cripple, who was unable to help himself, and when he was about to be offered for sale, much sympathy was expressed for him in the crowd of bystanders, and many persons said that 'Sam must be bought in for John Hawkins.' A subscription was drawn up and signed by divers persons there present, and by the plaintiff amongst the rest, to the effect that, if the slave Sam could be bought for J. P. Hawkins at a sum under four hundred dollars, they would go in as his sureties. When the slave Sam was put up, he came forward, lifting the cripple J. P. Hawkins, and placed him in the piazza where the selling was carried on; the crier called the attention of the crowd to J. P. Hawkins' condition, and then said, 'J. P. Hawkins will give $100 for Sam, who will bid any more?' The crowd cried, 'knock him off! knock him off!' No one bid any more, and he was knocked off to J. P. Hawkins at that price. The plaintiff contended that the defendant was guilty of a *devastavit,* in permitting the slave to be sacrificed to a mistaken sympathy, amounting to an illegal combination."

Held: the plaintiff [194] "after being, in part, instrumental in bringing about the result of the sale, . . cannot be permitted to charge the administrator with a *devastavit* for not preventing it."

Everton v. Everton, 5 Jones N. C. 202, December 1857. Petition for a divorce *a mensa et thoro*: [204] "while your petitioner was . . confined to her bed, the defendant was so lost to all sense of self-respect . . as to shoot with a gun, in her hearing, a very valuable negro woman, belonging to the . . children of your petitioner, and threatened to kill her, and . . attempted to enter, by force, the room, wherein petitioner was ill, to kill said slave; . . tied, or caused to be tied, two of his own slaves, one of them grown, and the other nearly so, and brought them, or had them brought . . under the window . . immediately adjoining the room in which your petitioner was . . dangerously ill, and whipped them, or caused them to be whipped, in his presence; that the disease with which she was . . suffering, was much aggravated by the cries of the . . negroes,"

Held: [212] "none of the allegations . . are sufficient . . [213] to entitle the petitioner to the relief which she seeks."

Leary v. Nash, 3 Jones Eq. 356, December 1857. Will of Solomon W. Nash: [357] "I . . leave my negro slave woman Venice, to serve my daughters ten years from the time of my death, and after the expiration of that time, I desire her to be freed; and if she wishes to remove to any free State, I wish her to be permitted to do so; and if she may be permitted to remain in North Carolina, that she may enjoy all the privileges that . . may be, allowed by law to slaves left by their masters . . to be freed. The way I desire Venice to serve my daughters is, for her to be hired out for . . ten years, and the proceeds . . equally divided"

Between the making of the will and the death of the testator, Venice had two children.

Held: [358] "Venice has her election either to leave the State and be thereby emancipated, or to remain here as a slave. As to this there will be an enquiry. The two children . . are slaves."

Clayton v. Glover, 3 Jones Eq. 371, December 1857. [272] "that he saw the white spots in the eyes, but thought the . . slave had glass-eyes, which is a sure sign of permanent vision; that he afterwards consulted a physician, who, on an examination, informed him . . that the . . slave might go blind immediately. . . Gregory maketh oath, that he considers the . . slave worth about $500, with his eyes defective." His full value in 1857, if sound, was $1000.

Newell v. Taylor, 3 Jones Eq. 374, December 1857. Deed, 1835: [375] "sold . . to . . Taylor and . . his wife, . . negro girl . . now about the age of ten years, for . . two hundred and fifty dollars, . . during the natural life-time of them,"

Held: [376] "The terms of the act [of 1823][1] . . can [not] . . be applied . . where there is no limitation over . . The case before us . . [377] must be governed by the rules of the common law, which make this . . the grant of the absolute interest" [2]

Lane v. Bennett, 3 Jones Eq. 390, December 1857. Will of Farnifold Jernigan: [391] "to my . . wife, [thirteen slaves] . . my executors . . in trust for my daughter [nine slaves.] . . It is my will . . that my negroes, Dave, Tom, Morris, Lila and Mary, be liberated, and that my executors . . send them to a free State, and I hereby set apart . . five hundred dollars, to defray the expenses of so removing them. . . It is my will . . that the following [ten] negroes be sold by my executors, . . [392] with all the balance of my property not herein given away, and . . they first set apart the five hundred dollars" "a suit was brought against the executor . . for the recovery . . of Dave . . mortgaged to . . testator . . a decree was passed [for his redemption.] . . The executor hired out . . Tom, Lila, etc., directed to be liberated, and has the sum thus produced in hand."

Held: [394] "The slaves who have been emancipated . . are clearly entitled, each, to his or her hire from the death of the testator. They had a right to their freedom from that time, and are not to be prejudiced by the delay of the executor in effecting their emancipation. They are also entitled to the residue of the five hundred dollars appropriated . . for removing them . . after deducting one hundred dollars as the share intended for Dave, who loses his freedom because of his having been redeemed by the mortgagor." [Battle, J.]

Gardner v. Masters, 3 Jones Eq. 462, December 1857. [463] "a copartnership in the business of making, distilling and selling turpentine

[1] Rev. St., ch. 37, sect. 22.

[2] "the grant of a life estate only in slaves, in a deed executed since the [Revised] Code went into operation [1856], would carry only a life estate to the grantee," Rev. Code, ch. 37, sect. 21.

in . . Georgia, . . hired . . a number of slaves . . 1853. . . purchased a number of slaves . . [464] for carrying on the work,"

Harrison v. Bowe, 3 Jones Eq. 478, December 1857. Will of Henry Hooper, 1853: "As the laws of the State would make a different disposition of my property, after my death, than would be pleasing to me, or consistent with moral justice, . . After the death of my mother and Jane B. Richardson [mistress of the testator], and Henry McAden Richardson [illegitimate son of the testator] has arrived at the age of twenty-one years, all the negroes are to be liberated, on condition of their leaving the United States, or performing any other condition that the policy of the State and the times seem to require; but such as . . [479] wish to serve, will be at liberty to remain on the plantation as slaves,"

Bost v. Bost, 3 Jones Eq. 484, December 1857. Will: [485] "that my sons . . have my mill . . and also my negro boy George, the miller,"

Pinckton v. Cauble, 3 Jones Eq. 494, December 1857. "Her hands worked the plantation with him [her son],"

State v. Whit (*a slave*), 5 Jones N. C. 224, June 1858. See same *v.* same, p. 206, *supra.*

State v. George (*a slave*), 5 Jones N. C. 233, June 1858. [234] "The prisoner was indicted, with . . Aaron and . . Gauzey, for the murder of their master, . . There was a count also against Gauzey as principal, and Aaron and . . George, as accessories before the fact. . . The gun was discharged about seven o'clock at night [February 1858], while the deceased was standing in his back piazza, not far from the houses occupied by the accused and other slaves . . Benbury . . heard of no threats up to twelve o'clock of the day; that Gauzey was taken up about one o'clock, and was brought into the house; he, as well as George and Aaron, was in irons and closely guarded; . . Lindsay came up . . very much excited, and said to him, 'you had as well tell me whose that gun is, or I'll kill you,' at the same time he struck him a blow in the face; he then added, 'Aaron and George say you know all about it, and if you don't tell all . . I'll kill you.' . . Benbury then interposed, . . Joseph B. Davenport stated, that 'he said to . . George, "tell about it; they will hang you if you don't;" . . a large crowd on the ground . . much excited. Shortly after . . the confessions now offered to be given in evidence were made.' S. W. Davenport stated, that he heard several men say, that the negro who did it deserved to be burnt, but this was not in the presence . . of either of the prisoners. . . [The confessions were] . . admitted. The prisoners were found guilty . . [235] and upon judgment being pronounced . . George appealed"

Judgment reversed, and a *venire de novo* awarded: "The evidence discloses a horrid murder, . . The prisoner may be guilty, but . . his guilt must be proved according to law. . . The confessions were extracted by means calculated to excite *the fear of present death in the firmest mind.* . . not more than an hour—possibly only a few minutes, intervened [before the confessions], and *the circumstances of terror*

remained the same. . . the same infuriated crowd . . [236] it was necessary to show that such a length of time had intervened, and such an entire change of circumstances . . taken place, as wholly to remove the effect of the influence . . brought to bear . . We are satisfied that the confession was made from fear, . . to avoid *present* danger and risk the future. . . to appease the crowd." [Pearson, J.]

Hendrickson v. Anderson, 5 Jones N. C. 246, June 1858. "an agreement that he should serve . . in the character of overseer and manager of his slaves, for the year 1855, . . [for] $150. . . September, . . he was discharged . . [247] rode the farm horses at night on patrol duty; . . intoxication,"

State v. Evans, 5 Jones N. C. 250, June 1858. Indictment for selling spirituous liquor to a slave without an order from his master.

Held: [251] "the averment, though a negative one," must be proved on the part of the state.

State v. Jacobs, 5 Jones N. C. 259, June 1858. "an indictment against the defendant as a free negro, for carrying arms, . . The State offered the defendant to the inspection of the jury, that they might see that he was within the prohibited degree."

Held: "it is, in effect compelling him to furnish evidence against himself in a criminal prosecution. . . [260] he is [not] bound to stand or sit within view of the jury." [Battle, J.]

Poyner v. McRae, 5 Jones N. C. 276, June 1858. "Action of covenant, . . 'State of North Carolina, . . Twelve months after date, . . we . . do promise to pay . . Poyner, . . seven hundred and twenty dollars, as the hire of four boys . . Jack, Dock, Cuse and Bill, during . . 1855; said negroes to have good winter and summer clothing, boots and socks, and said boys to be at my risk in going to and from my swamp up Roanoke, and not to go out of this State. . . January 1st, 1855.' . . [277] June, . . Cuse applied . . for permission to visit Currituck, representing that his young master was sick, and he wished to see him. . . but did not go to Currituck. . . recognized in . . Norfolk, Va., . . not been since heard of,"

Held: [278] "the meaning of the parties was not to prohibit the slaves . . from going out of the State . . under all circumstances, but to forbid the defendant from taking them to work out of the State, and to bind him to use all proper care . . in preventing them from escaping beyond its limits. . . The case of Woodhouse *v.* McRae,[1] . . shows that there was not a want of ordinary care" [Battle, J.]

Baker v. Pender, 5 Jones N. C. 351, June 1858. A male slave was valued at $1200.

Thompson v. Kirkpatrick, 5 Jones N. C. 366, June 1858. "The plaintiff declared as an overseer of a road, against the defendant, for failing to send his hands to work upon the road after due and sufficient warning." Judgment for plaintiff affirmed.

[1] P. 208, *supra*.

State v. Frank (a slave), 5 Jones N. C. 384, June 1858. "The defendant was indicted for the murder of Eli, a slave. . . [385] that for the last four years, Frank had been intimate with Lucy [a free woman of color, the wife of Eli]; that it had been endeavored to keep this intimacy a secret from Eli, but that on one occasion, he (defendant) had been detected at her house, and a fight had taken place . . March last, . . the body of Eli was found in a mill-pond, about half a mile from the house of . . Lucy. . . bruises . . seemed to have been produced with an axe; . . Blood was traced . . to the house of . . Lucy. . . tracks . . measured . . correspond with the shoes of the prisoner. . . [386] Verdict against the prisoner." Judgment thereon, affirmed.

Washington v. Emery, 4 Jones Eq. 32, June 1858. [33] "There was a charge upon the estate for the support of five superanuated [*sic*] slaves, . . [34] The administrator . . allowed them small sums, amounting, during the whole time, to $90. . . followed the example of the testatrix, whose universal practice it was . . that such was the usage in that community [Craven County]. . . the slaves of this estate were faithful and obedient. This item was rejected by the commissioner."

Held: [37] "policy, as well public as private, sanctions that decree of indulgence . . and . . in that section of the State, it is usual for masters to give slaves, who are hired out, presents at christmas, when the year ends, and for the hirer to allow each slave twenty-five cents at the end of every week as an inducement to good behavior." [Pearson, J.]

Holderness v. Palmer, 4 Jones Eq. 107, June 1858. [109] "The counsel for the plaintiffs contend that the executor violated his duty by selling the home tract . . that in consequence . . he had himself made it necessary to hire out the woman and children, whereby they were not properly taken care of, and several of the children died," Battle, J.: [110] "it was absolutely necessary to sell, either land or negroes, to pay the debts. . . [111] not one of the children, who died in this State, did so from want of proper attention. Two of the most valuable of them died of scarlet fever in the possession of the executor, . . under the care of the testator's favorite overseer, . . Others were infants, from one to two or three years old, and died from the effects of teething. The remainder died in Virginia, in the possession of . . a brother of the testator, who had very shortly after the testator's death, taken them by force"

Blount v. Hawkins, 4 Jones Eq. 161, June 1858. [164] "some of the slaves, after the death of the testator, ran off and escaped to a free State, and the executrix expended a large sum in having them recaptured and brought home. They were afterwards sold by her for a less sum than the amount of the expenses incurred in their recapture."

Edney v. Edney, 4 Jones Eq. 127, August 1858. A negro woman and child sold for $435.

High Shoal Mining Co. v. Grier, 4 Jones Eq. 132, August 1858. [133] "a number of inhabitants in the city of New York, constituted . . Groot

their agent, to purchase the property of the 'High Shoals Manufacturing company,' . . which consisted of . . gold mines, iron mines, a lime quarry, . . and seventeen slaves. . . [134] that these slaves are stated to be worth from 18 to 25 thousand dollars;"

Gilreath v. Gilreath, 4 Jones Eq. 142, August 1858. [143] "the plaintiff [defendant's father] bought a female slave, who had children very fast; these, as they grew up, with the two slaves [before owned] . . and defendant's children, under his superintendence and active assistance, . . on a small tract of inferior land, made a comfortable living, . . In . . 1847, the plaintiff sold a negro girl, who had become refractory, for . . $525,"

David Jarman v. Humphrey, 6 Jones N. C. 28, December 1858. [30] "The plaintiff . . placed his claim to freedom upon two grounds: *First*, a regular act of emancipation in . . 1822, according to the then existing law." Summary of the proceedings: [29] "A petition filed by Benjamin Jarman, addressed to the Superior Court . . setting forth that the petitioner, himself, had been the slave of John Jarman, . . been manumitted by the County Court . . for meritorious services; that he had a child while in bondage, . . David; . . David was, at the filing of the petition, about thirty . . distinguished for honesty, industry and fidelity to his master; that his . . master, Edward Williams, had been offered a large sum for him, but had refused, on account of the excellent conduct of David, to take it, and had sold him to his father, the petitioner, for a reduced price. The prayer was for the emancipation of David. . . The affidavit of Edward Williams, stating that he had owned David for about thirty years; that during the whole of the time, his conduct had been in the highest degree . . meritorious; that he had reposed unusual confidence in him, . . had sold David to his father . . because he would not sell to any but his father. . . The judgment of the Superior Court . . 1822, . . 'ordered . . that the said slave may be . . set free.' Bonds were given . . The bond to the Governor, conditioned for the good behavior of David, was signed by the former owner, . . David further claims his freedom on the ground that he has acted and been considered as a free man ever since . . 1822, up to the time of the trespass complained of in this suit . . 1857, . . [30] Benjamin Jarman was a slave at the time of filing his petition for the emancipation of . . David, and it was insisted that he could not own, and therefore could not emancipate the plaintiff. . . the Court being of opinion with the plaintiff, gave judgment that he recover one dollar and his costs,"

Judgment affirmed: [31] "if Benjamin Jarman were a slave when his petition was filed, . . [the] title [of Williams to David] was undoubtedly divested in favor of the plaintiff, either by his acts in connection with the proceedings of the Court, or by his long acquiescence afterwards. . . every presumption ought to be made in favor of his actual emancipation according to all the requirements of law." [Battle, J.]

State v. Bill (*a slave*), 6 Jones N. C. 34, December 1858. "Indictment for burglary, . . Chason, (the prosecutor) lived on the borders of

the Big Swamp, . . his house was broken open and certain articles . . stolen by a number of negroes; that the prisoner was present, . . that some short time after . . about two miles from Chason's house, the camp of a number of runaway negroes was found. . . the prisoner was one of them."

[38] "the sentence of the law may be pronounced upon the prisoner." [36] "A gang of them had a camp . . not far off. . . They were renegades, . . and they were runaways; who as a class, have a known propensity to steal. . . [37] the presiding Judge did not err in admitting the testimony" [Battle, J.]

State v. Hannibal and Ned (*slaves*), 6 Jones N. C. 57, December 1858. "Council kept a store in the country, and in order to guard it by night, he made one of these slaves sleep in a room under the same roof . . and the other, in a house about a hundred yards off, and he gave each of them a gun, which they kept in their respective houses, where they were found by the informer." The slaves "were convicted by a justice of the peace, and sentenced to receive twenty lashes each, and it was adjudged that Council 'pay a fine of five dollars each.' The master appealed to the County Court, . . affirmed, . . appealed. In the Superior Court, . . [58] His Honor held that the case was not within the statute, and discharged the slaves, . . the State appealed."

Held: [59] "a master cannot now arm his slave for any purpose; consequently, the judgment . . for the punishment of the defendants, was according to the law,[1] . . The Court is at a loss to discover the ground on which the master was fined." [Ruffin, J.]

State v. Atkinson, 6 Jones N. C. 65, December 1858. "Indictment for a riot, . . Mrs. Jernigan testified, that . . after the family had retired, she and her husband were awakened by the cries of one or more of their slaves; . . at a short distance from their dwelling-house, she found . . Bill, tied with a rope, and held by . . Shallington; that she seized it, and in the scuffle . . the slave made his escape; that she then heard Jack cry out at some short distance . . 'I am ruined,' . . found him tied, lying on the ground, with six wounds . . on his breast, abdomen, back and head; that the defendants had two bowie knives, and on her husband's coming up, two of them branished [*sic*] these weapons over his head, . . that one . . said he had come for revenge, . . [66] that Atkinson said that Jack had cut his hand, and he would give him fifteen lashes, which was done, the boy then immediately sank down, and his bowels came out. . . before he was whipped, some one of the [three] parties said that they were acting as patrols. . . Verdict for the State."

Judgment thereon, affirmed: [68] "we are very far from thinking that the authority, which the law confers on patrols, can sanction such outrageous conduct" [Battle, J.]

State v. Nat (*a slave*), 6 Jones N. C. 114, December 1858. "Indictment for an attempt to commit a rape upon a white woman, . . that

[1] Rev. Code, ch. 107, sect. 26. Earlier legislation on the subject: act of 1729 (Ired. Rev. Code, ch. 5, sect. 7); act of 1741 (*ibid.*, ch. 24, sects. 40-42); Rev. St. of 1836, ch. 111, sect. 23.

immediately after the offense and the charge against the prisoner, he fled, and though searched for . . by an officer, he could not be found for a week or two. . . Edwards [his owner] . . [115] superintended his defense. . . two slaves were introduced . . to show an alibi, . . Sam and his wife Lucy. . . that Lucy was domiciled in the family of Mr. Edwards . . and that Sam, her husband, came to see her once in three weeks. . . Sam and Lucy, on their . . examination, showed much feeling and partiality for the prisoner," Verdict of guilty. Judgment thereon, affirmed.

Johnson v. Dunn, 6 Jones N. C. 122, December 1858. Action of covenant. "Johnson agrees to hire to . . Dunn three pairs[1] of sawyers, at twenty-five dollars per month per pair, to be paid . . January 1st, 1856. One pair to commence . . February, and the other two by the first of April; provided, they do not run away before. . . [123] Johnson agrees for . . Dunn to keep the said hands all the year, . . unless he becomes dissatisfied with their treatment," The third pair of sawyers "were not delivered at all, but were hired, by the plaintiff, to . . Hyman for the year. . . sometime in the summer of 1855, the plaintiff wrote a letter to the defendant, . . complained that the sawyers, then in the latter's possession, were not well treated; that their food was not of a proper kind; that no house had been erected as defendant had promised, and that they were worked in a dense, sultry and unwholesome swamp. . . the plaintiff and defendant met on the 23rd [of August] . . when the plaintiff said . . 'I suppose my negroes have run away.' The defendant replied, that they had gone away some two or three weeks before." [125] "The plaintiff [had taken] . . away the two pair of sawyers, and [hired] . . them to . . Hyman," [123] "about the first of August, . . the defendant demanded the return of the sawyers, which was refused by the plaintiff." Verdict for the defendant. Judgment thereon, reversed, and a *venire de novo.*

State v. Emory, 6 Jones N. C. 133, December 1858. "Fuller, a free negro, occupied a house, . . the family of Fuller was put out . . with violence, and . . kept out . . The defendants offered to prove, that on the next day . . Fuller . . stated that he had agreed with . . [134] Emory, that he might . . take possession . . evidence . . rejected . . Verdict—guilty."

Judgment thereon, affirmed: "Fuller, being a . . negro, was not competent as a witness,"

Bookfield v. Stanton, 6 Jones N. C. 156, December 1858. "Trespass *vi et armis* and false imprisonment, . . [157] to try the right . . to his freedom, . . the plaintiff was black. . . introduced evidence to show, that for thirty years, and more, prior to his birth, his mother and his maternal grand-mother were . . recognised . . to be free persons of color, . . that his mother, as a free person of color, removed from the county of Carteret to Hyde, and lived there as such. She was reputed to

[1] [124] "a saw cannot be operated without two practiced hands."

be the wife of a slave, but lived to herself, and was controlled by no one. . . The defendant . . offered in evidence an attachment . . levied upon . . Beck [[159] 'the plaintiff's grand-mother'], and her children, Fan and Olly, . . 1809. . . ruled out . . also . . a bill of sale for the plaintiff, . . rejected . . [158] Verdict for the plaintiff."

Judgment thereon reversed and a *venire de novo*: [159] "the bill of sale . . was . . properly excluded. We regret that we cannot say the same of the attachment" [Battle, J.]

Bell v. Morrisett, 6 Jones N. C. 178, December 1858. "the plaintiff alleged that at the sale, the slave was laboring under a chronic disease, which resulted in his death six months afterwards; . . offered to prove the declarations of the slave as to his health . . made two months before the sale, and at longer periods, and also . . several weeks after the sale."

Held: the testimony was admissible.

Howard v. Howard, 6 Jones N. C. 235, December 1858. "Action of ejectment, . . Miles Howard, a free man of color, died intestate in 1857, seized in fee of the premises . . About . . 1818, he being then . . slave . . without other ceremony, took for his wife, by consent of his master, and a Mr. Burt, Matilda, a slave of the latter, and was immediately thereafter emancipated. Miles then bought his wife, . . and by her had issue, the lessor Frances, when . . Matilda was duly emancipated. After this event, they had other issue, . . [seven] lessors, . . when . . Matilda died. In a few years . . Miles took another wife, a free woman of color, and had issue, the [four] defendants, . . The latter marriage was performed with due ceremony, the former was celebrated in the manner usual among slaves, and the parties lived together ever afterwards as man and wife, . . [236] In 1836, . . Frances, with other children who died before the intestate, Miles, was emancipated as the children and slaves of . . Miles Howard, by an act of the Legislature."

Held: [238] "the relation of master and slave is wholly incompatible with even the qualified relation of husband and wife, as it is supposed to exist among slaves, . . Frances, does not take as one of the heirs of her father. The other lessors are in a condition still more unfortunate; . . Their parents, having become free persons, were guilty of a misdemeanor in living together . . [239] without being married, as the law required; so that, there is nothing to save them from the imputation of being 'bastards.' . . To the suggestion, that as the qualified relation . . is *not unlawful,* . . emancipation should be allowed to have the effect of curing any defect . . the reply is: The relation between slaves is essentially different from that of man and wife joined in lawful wedlock. . . with slaves it may be dissolved at the pleasure of either party, or by the sale of one or both, depending on the caprice or necessity of the owners." [Pearson, C. J.]

Ponton v. Railroad Co., 6 Jones N. C. 245, December 1858. "The action was brought for the negligence of one of the servants of the company in permitting a switch to be out of place, whereby a collision took place . . which caused the . . death of the plaintiff's slave. . . The slave

. . was a breakman [*sic*], on the freight train, hired . . for that service; he was at his proper place when the collision happened, and was crushed . . between the trains."

Held: the plaintiff cannot recover: [248] "It would be singular, if the owner of a slave could recover for damage sustained by a slave,[1] when upon the same state of facts, the slave, if he had been a freeman, could not have recovered." [Ruffin, J.]

Davis v. Boyd, 6 Jones N. C. 249, December 1858. [251] "Lavinia . . he had bought [in 1848 or before], with her mother, at . . $1000. . . [252] in 1855, as . . Lavinia, was passing, the plaintiff remarked that Boyd [his son-in-law] had offered him $1500 for her, and he did not know why . . as he had given him . . Minerva, worth two of her, but he supposed he wanted her because she was a good house-keeper."

Alexander v. Torrence, 6 Jones N. C. 260, December 1858. "Caleb . . had originally belonged to . . Johnson, of . . South Carolina, who made a deed of gift of him to his sister . . intermarried with . . Burnet. On the death of . . Johnston [*sic*], his son . . 1837, sold the slave . . to . . Caldwell, who was passing through . . and he carried him to Alabama, and sold him to . . Alexander, . . Twelve years afterwards, as the plaintiff was passing through South Carolina, . . Caleb, ranaway and went into the possession of Burnet, . . and suit was brought . . decided . . that the right of property in the slave was in Burnet, *jure mariti*."

Jones v. Baird, 4 Jones Eq. 167, December 1858. "In . . 1828, it became desirable to sell . . a young negro woman . . whose conduct had become displeasing to her mistress;"

Dunlap v. Ingram, 4 Jones Eq. 178, December 1858. Will of Jeremiah Ingram, dated 1853: [179] "My desire is, that all my negroes, in . . Mississippi, (except Reuben) . . [180] be disposed of, . . I give to my friend . . my negro Reuben, . . that all my negroes in this State, except such . . hereinafter . . disposed of, be equally divided or sold, . . among the heirs of . . My further desire is, that if any of my negroes should have a choice of homes, they be valued at a low price, to such one of my legatees as they may wish to live with; . . I . . bequeath to my nephew . . Edmund, Tempe, George, Dick and Judy, in trust, with a desire that he permit them to enjoy the proceeds of their labor in all respects, in as full and ample a manner as the laws of the State will permit, and that they may have the use of a sufficient portion of my land . . for making their support. . . also . . Viger and her [four] children, . . in trust, . . and that they be permitted to have a home on my plantation."

Held: [183] "the trust expressed is unlawful, as it is very plainly for the emancipation of negroes who are to reside here. . . [184] result to the next of kin." [Ruffin, J.]

[1] Nevertheless, the Court of Appeals of Kentucky held, in 1856, that he could. Railroad Company *v.* Yandell, vol. I. of this series, p. 427.

Davis v. Marcum, 4 Jones Eq. 189, December 1858. "1854, the defendant offered the [two] slaves for sale [in Chatham County, 'for the purpose of distribution amongst the next of kin, who were numerous,'] . . and they were bid off at the price of $2,265," to a resident of Cumberland County. Ruffin, J.: [191] "persons from a distance are often the best bidders, and it is the duty of the administrator to get the best price;"

Purnell v. Dudley, 4 Jones Eq. 203, December 1858. Will, dated 1852: "I give to my sons, . . sixty slaves, including Jim and his wife, etc., and the balance of the sixty to be chosen by my sons; . . all the residue of my slaves . . to be sold as soon as convenient, and out of the money . . [204] pay my debts," Codicil, 1853: "I increase the number of slaves, given to my sons, from sixty to seventy-five . . so as to provide for the said increase in the number of slaves," [205] "Those slaves were . . valued at $37,425,"

Redding v. Findley, 4 Jones Eq. 216, December 1858. "1852, Anne L. Woods . . by deed, conveyed to . . Long, three slaves, in trust for her, during her natural life, and upon her death, upon trust 'to send them to Liberia or some free State, if they make choice to go, within one year after my death, and if Ellen should have any children, they are to go with her; but if the negroes should not choose to go, then they are all to belong to Alexander Findley,' . . she died intestate, in 1857; and [the slaves] . . elected to go to Liberia or to one of the United States, in which slavery does not exist, in order to be free there. . . Redding, administered . . and filed this bill . . alleging that the deed was obtained by undue influence . . when Mrs. Woods was in extreme old age . . and also insisting, that the deed is void"

Held: I. [217] "The . . proofs establish very satisfactorily the capacity of the party . . [II.] It is totally immaterial . . by what kind of instrument the trust, for emancipation, may be created, whether a deed or a will. . . [III.], [219] to the admitted capacity of accepting emancipation, there is inherent a legal capacity to assent to all those incidents which go to make the emancipation itself effectual." [Ruffin, J.]

Barker v. Swain, 4 Jones Eq. 220, December 1858. "A negro, called Daniel Jones, employed the plaintiff to sell a buggy and jackass for him. The plaintiff took . . to South Carolina, and sold them for $450; . . delivered to the negro [$200] . . [221] afterwards collected the [remainder] . . and after deducting his wages and . . charges, there remained a balance of $225,96, in his hands. Each of the defendants, Stanly and Swain, claimed the money, and the plaintiff . . sets up no claim to it. . . Some years before . . McMasters sold . . Daniel, to Joshua Stanly, at the price of $300, for which Stanly and seven others, gave their bond, with an understanding . . that the negro was to have his own time, and the proceeds of his labor, and was to pay the bond as he could earn the money; and upon the full payment, . . to be free; . . the negro did have his time, and the proceeds of his labor, for a considerable period, and carried on the business of making and selling buggies, . .

Afterwards, Joshua Stanly died, and . . [his administratrix] took the negro into possession, . . and also demands the money in the plaintiff's hands, as the earnings of the slave. . . while the negro was . . carrying on his shop, . . Swain, sold to him the jackass . . at the price of $350; . . Swain alleges that it has not been [paid], and . . claims the money from the plaintiff"

Held: [223] "the law makes such dealings [as Swain's] with a slave . . criminal; . . [224] as to the title of Stanly. It is an indictable misdemeanor in the owner . . to . . let him go at large as a freeman, . . the plaintiff . . may hold the fund, since neither of the defendants can get it from him." [Ruffin, J.]

Williams v. Smith, 4 Jones Eq. 254, December 1858. Will: "I wish Nathan and Jerry to be hired out to support and school my three youngest children, . . When the youngest . . becomes of age, then I wish for Nathan and Jerry to be sold,"

McBride v. Williams, 4 Jones Eq. 268, December 1858. [269] "In contemplation of a marriage, . . a deed was made, . . 1830, wherein . . [eighteen] slaves . . were conveyed . . in trust,"

Worth v. McNeil, 4 Jones Eq. 272, December 1858. Will, 1850: [273] "The plantation whereon I live, I wish carried on as before, by keeping the most suitable hands on it. My negroes not to be hired out . . I desire that my wife have as many negroes to wait on her, as she may want; that is to say, as many of the women and girls as may be necessary—one boy and old George to take care of the stock. . . I . . direct that Isaac and one other hand be kept at the mill, when necessary, and two others to cut and haul, . . I desire little Grace to be sold, and the money to be given to my wife, but let her be sold out of the State." As the contest of the will lasted longer than the administrator expected, [274] "he proceeded [after two years] to hire out the slaves,"

Williamson v. Williamson, 4 Jones Eq. 281, December 1858. Will, executed before the Revised Code[1] of 1854 went into operation: [282] "I . . bequeath to my . . daughter, . . one negro girl, named Mary, now in her possession, and her increase, if any; also, one negro girl, named Bethany," Mary [283] "was put into the possession of [the daughter and her husband] . . when she was about five years old; and has remained . . She had one child before the making of the will, . . Bethany, was put in [their] . . possession . . by the testator, after his will was executed, together with her first child . . who was born after the making of the will, . . Bethany, had another child before the death of the testator,"

Held: [285] "The bequest [of Mary] is . . a confirmation of the previous parol gifts, and carries with it the increase as an adjunct . . [286] The children of . . Bethany, do not . . pass with their mother, but fall into the residue to be sold" [Battle, J.]

[1] Ch. 119, sect. 27: "a bequest of a slave with her increase, shall be construed to include all her children born before the testator's death, unless a contrary intention appear by the will."

Smith v. Bank, 4 Jones Eq. 303, December 1858. "Jim, about seventeen years of age, was rogueish and unmanageable, and the plaintiff, and her husband, concurred in thinking it was best to dispose of him, . . 1855, . . accordingly, Smith took Jim to Richmond, Virginia, and soon after brought back a negro girl . . about thirteen years of age, whom, he said, he had received in exchange for Jim, and also . . [304] $125, to boot, . . The answer . . states that Jim was carried off against the . . decided opposition of the plaintiff."

Prue v. Hight, 6 Jones N. C. 265, January 1859. "Alfred Prue, a free boy of color, . . of Franklin county, was bound by the County Court . . as an apprentice, to . . Fuller, . . who removed . . in 1849, leaving the apprentice in charge of . . Hight, . . Hight placed the apprentice with a son-in-law, who lived in Granville county, where . . he stayed as a servant until the close of . . 1857, when he deserted his home, and went at large, in Granville county, until March, 1858; being still a minor, he was brought to the County Court of Franklin, and . . bound to Hight, . . The petitioner, the apprentice . . deeming himself an inhabitant of Granville county . . sued a writ of *habeas corpus,* and prayed to be discharged . . [266] the Judges unanimously agreed, that the petitioner had been lawfully bound . . by the County Court of Franklin." Ruffin, J.: [267] "the whole control of the free infant of color . . is . . given [to the court 'which first legally takes charge of him'] for the twofold purpose of protection from much wrong—even, possibly, of being enslaved in remote places, and in the wholesome exercise of a local police;"

George v. Smith, 6 Jones N. C. 273, June 1859. "Action . . for an injury to a slave hired . . to the defendant, . . [247] [one of the defendants] said to the plaintiff's agent, at the time of hiring, that he wished to hire negroes for . . getting turpentine; that the agent replied, he understood that Edmund was a *number one* turpentine hand. . . The clerk of the defendants stated that Smith, one of the defendants, instructed him that if Edmund applied for a pass, to go by the railroad to Wilmington, to give it to him; . . he did . . Smith said the negro was very bad for liquor. . . was found [a few days after receiving the pass], about four miles from Wilmington, lying on, or near, the railroad track, greatly injured; . . An empty bottle . . near . . which smelt of spirits, . . [275] Verdict and judgment for the plaintiff,"

Reversed and a *venire de novo*: "giving a slave a pass . . was a *leave of absence* from work." Also, no negligence.

Harrell v. Lee, 6 Jones N. C. 280, June 1859. On the first of January 1857 the slave Drew was hired [281] "for that year, . . distinctly announced that no one of them was to be carried out of Bertie county, or worked in a stave-swamp. Drew was . . bid off by the defendant, . . for $131. . . was valuable, and would have hired for $150 without restrictions. The defendant, on the 2d of January, sent the . . slave to his stave-swamp, in Martin county, where he was killed, about the middle of February, by the falling of a limb from a timber tree which he was

cutting. . . [282] value of the slave . . estimated by the jury, . . $1000" Judgment for the plaintiff, affirmed.

State v. Jacobs, 6 Jones N. C. 284, June 1859. [285] "Indictment against the defendant, as a free negro, for carrying fire-arms, . . The State introduced . . Pritchett, who swore that he . . had known him as long as he had known any one; that he had never seen any of defendant's ancestors, . . the solicitor with a view of showing . . witness . . qualified . . as an expert, inquired . . what business . . he followed, . . stated that he was a planter, an owner and manager of slaves, . . more than twelve years, that he . . had had much observation of the effects of the intermixture of negro . . blood with the white and Indian races, and . . was well satisfied that he could distinguish between the descendants of a negro and a white person, and the descendants of a negro and Indian; . . also say whether a person was full African . . or had more or less than half . . African blood in him, and whether the cross . . was white or Indian blood. . . stated his opinion to be that the defendant was . . a mulatto—that is, half African and half white. The defendant's counsel excepted . . and upon defendant's conviction, appealed"

Judgment affirmed: [288] "it would often require an eye rendered keen, by observation and practice, to detect, with any approach to certainty, the existence of any thing less than one-fourth of African blood . . A free negro . . may . . be a person who . . has only a sixteenth . . The ability to discover the infusion of so small a quantity of negro blood . . must be a matter of science . . admitting of the testimony of an expert: . . [289] Pritchett . . possessed the . . qualification, to testify as such." [Battle, J.]

Slocumb v. Washington, 6 Jones N. C. 357, June 1859. "The slaves . . had been hired in 1856, to the defendants as rail-road contractors, at eighty cents a day [[360] 'high wages, for mere laborers,'], and there was a stipulation that they should not be worked below Bear Creek. The defendants carried them to work below Bear Creek, and . . January, 1857, there came on a heavy fall of snow. The slaves were out in this storm [[359] 'on their journey to their master's, . . against the orders of their manager'] . . and returned to their master frost-bitten and otherwise injured. . . the shanty for the hands . . had no chimney, but in the centre . . [358] was made a fire . . that holes were left . . for the escape of smoke; that loose plank were laid down on poles for the slaves to sleep on; there was an opening for a door, but no shutter, . . that twenty or more hands were put into the cabin to sleep; . . plenty of wood . . at hand; that the slaves that remained in the cabin were not in any way injured by the storm."

Held: [360] "there was no such want of ordinary care of the slaves as authorised them to leave the situation in which the defendants had placed them,"

Wilson v. Shulkin, 6 Jones N. C. 375, June 1859. [376] "There were two . . ferrymen . . the mules became frightened, made a rush forward . . The ferrymen . . jumped over-board, . . Neither of the plain-

tiff's servants [who held his horses] jumped over-board or left the flat until it reached the shore."

Hussey v. Weathersby, 6 Jones N. C. 387, June 1859. "May 23, 1859. Received . . fourteen hundred dollars, in full of a negro man Mingo, supposed to be twenty-five years of age, which negro I warrant to be sound in mind and body," Mingo died of consumption within two years afterwards.

State v. Floyd, 6 Jones N. C. 392, June 1859. Indictment for murder. "the prisoner came to the [blacksmith] shop [of the deceased, a free negro], . . apparently friendly; . . said . . he wanted something to eat, . . [the deceased] told the prisoner to cut some of the meat . . handing him a knife" Floyd did not return it. Later on there was a fight between them, resulting in the death of the negro. [396] "The jury found the defendant guilty of murder."

Judgment thereon reversed and a *venire de novo* awarded.

Page v. Luther, 6 Jones N. C. 413, June 1859. Held: [414] "the law, as it stands in the Code of 1854,[1] . . admits of no such exception to the general prohibition of trading with slaves for spirituous liquors as that contained in the previous statutes;"

Knox v. Railroad Co., 6 Jones N. C. 415, June 1859. The plaintiff hired Alfred "to the defendant for the year, 1855, . . agreed 'that Alfred was to work upon the railroad under the eye of a white overseer all the time . . John Rhodes' . . he divided the hands into several companies . . Alfred, and five others, were placed on the road in Davidson, as a waggoner, to haul sills . . and that no white overseer was with them . . [416] because they were the most trusty slaves on the road." "Rhodes went . . forty-five miles distant; . . Alfred . . received an injury on the head which killed him in some eight or ten days; that when Rhodes heard of the hurt . . he came immediately . . found him lying in a shantee with the appearance of having received a blow . . which fractured his skull; . . several days . . before medical aid was rendered him."

Held: [418] "it was in contemplation of the parties that the life of the slave would be more exposed . . without an overseer or with a black overseer, (who could not prevent fighting and other kinds of disorder) . . the plaintiff is entitled to recover the amount of his loss, unless the defendant can reduce it to nominal damages, by showing in mitigation, that the actual loss was a consequence so remote, as in no wise to be attributable to the absence of a white overseer." [Pearson, C. J.]

State v. Harris, 6 Jones N. C. 448, June 1859. "the defendant is a free negro, . . had a license from the County Court . . 'to keep about his person, and to carry on his own land a shot-gun.' . . the defendant, in company with certain white persons, went a hunting, and carried his gun off of his own land."

[1] Ch. 35, sect. 92.

Judgment for the defendant, reversed: [449] "The authority to grant the greater privilege,[1] must, we think, necessarily include the power to grant the less, provided the applicant be willing to accept it."

Morrison v. McNeill, 6 Jones N. C. 450, June 1859. "1854, purchased . . negro woman and three children at the price of $2,400,"

Lane v. Phillips, 6 Jones N. C. 455, June 1859. "The plaintiff agreed to serve the defendant as an overseer . . during . . 1856, . . for . . $250. . . in June . . he was discharged . . The cause . . was, that he . . directed several of the men slaves to go to the farm of a neighbor and assist him about his wheat. . . [456] the defendant . . ordered them back . . saying his crop was too much in the grass to allow it. The plaintiff commanded the slaves to go on . . and swore he would shoot them if they did not. The slaves did go on, and . . the defendant pursued and turned them back. After their return the plaintiff sent one or more of them to the neighbor, without the knowledge . . of the owner." Battle, J.: "This is the first instance of such an assumption of authority, which has, so far as we are aware, come before the courts,"

State v. Carroll, 6 Jones N. C. 458, June 1859. "The defendant was convicted of trading with a slave, and sentenced . . to 'one month's imprisonment,'"

State v. Fisher, 6 Jones N. C. 478, June 1859. [479] "that the prisoner ['a man of color'] had been duly married to the woman called his wife, and that they had lived the preceding year with the deceased; that the prisoner had been hired out for court-costs, and was living at the time with a near neighbor of the deceased; . . his wife . . was living with the deceased at his house," [478] "the day after the homicide . . [an officer] having arrested the prisoner, . . ironed him and took him to the body of the deceased, . . he was there accused of the murder, . . ['several persons present'] immediately took him a short distance off, and tied him up to a tree and told him they intended to whip him until he would agree to show them the gun . . [479] not . . to make him confess the murder; . . struck him five or six licks with a whip on his bare back, when he agreed . . and they went, under his direction, and found the gun. . . on the way . . the prisoner made a partial confession. . . the witness said to the prisoner he did not see how he could have the boldness to shoot a white man, . . he replied, because he had taken away his wife—that he had kept her for some time, and he had warned them, and did not regret what he had done. . . Johnson . . testified that on the day after the arrest, he was at the jail . . and called him [the prisoner] to the window. . . said, 'Dick, you have played hell now.' . . the prisoner replied, 'yes master Johnson, they have got me now, but I did'nt intend to kill Hassell; it was dark, and the shot went higher than I intended.' . . [480] Verdict, finding the prisoner guilty of murder."

Judgment thereon, affirmed: [482] "the second confession did not proceed from the same influence which . . cruelly extorted the first. . .

[1] Rev. Code, ch. 107, sect. 66.

[484] It has been further argued . . that the second confession ought to be excluded . . for the purpose of discountenancing, and thus putting an end to such gross violation of law as the officer and his party . . were guilty of, . . We think the purposes of justice will be best accomplished by having the officer indicted and punished for his unlawful and tyrannical abuse of his official power." [Battle, J.]

State v. Johnston, 6 Jones N. C. 485, June 1859. "The indictment charged the defendant with unlawfully buying one peck of corn of a slave"

Bond v. McBoyle, 7 Jones N. C. 1, June 1859. [2] "that he hired . . 1st of January, 1855, two negroes, . . that the plaintiff represented the negroes as sound and fit for labor at a steam-mill [saw-mill]; that about March, he returned one . . as being unfit for the business;"

Mercer v. Byrd, 4 Jones Eq. 358, June 1859. "that finding her unruly, and being unable to manage her, she [the life tenant] had been compelled to hire her out, . . that . . the negroes . . were there in her way, she feeding them there, and they doing but little good or none."

McKeil v. Cutlar, 4 Jones Eq. 381, June 1859. "Catharine Cutlar . . was the owner, for her life, of a slave . . Caswell, with a remainder over . . In 1851, a charge of homicide was preferred against the slave, and either at the instance of . . Catharine, or of the slave's own motion, or both, he eluded a caption, and was secreted. While thus concealed, she employed . . Caleb Cutlar, to assist her in selling him, so that he might not fall into the hands of the law. . . Caleb . . secured the services of . . Hodges, who effected a sale . . to . . a trader, at the price of $500, and she took the money. The sale was of the entire property in the slave, and the . . understanding was, that Caswell should be carried beyond the limits of the State, secretly,"

Held: the remainderman is entitled to a share of the money received.

Fairbairn v. Fisher, 4 Jones Eq. 390, June 1859. [392] "Daniel . . had been runaway for twelve months; that when the defendant [one of the executors] got possession of him, he thought it was the surest, and, probably, the only means of securing the value of him to the estate, to sell him; that the slave was turbulent, and regarded as dangerous in the community, and that the citizens of Newbern objected to his remaining there . . [393] that this slave was insolent towards him, and threatened that unless he was permitted to select his owner, he would runaway again;" [394] "imprisoned [the slave] for the purpose of selling," The residuary legatee [393] "took the negro out of jail, . . and that this defendant and [he] . . sold the slave to a trader at a fair price,"

Davis v. Hall, 4 Jones Eq. 403, June 1859. [404] "that the original slaves were a woman and two children, and that they have increased to the number of ten or more, and that their maintenance was troublesome and expensive,"

Woodfin v. Insurance Co., 6 Jones N. C. 558, August 1859. [559] "The policy . . insures the life of the slaves for five years, . . annual payment of $12,24"

Mullins v. McCandless, 4 Jones Eq. 425, August 1859. In 1857 two slaves were sold "to a trader, who carried them to the county of Rutherford;"

Elliott v. Posten, 4 Jones Eq. 433, August 1859. [434] "a negro child was born of . . Mahala, given by the will to Mrs. Posten, after the making of the will, and before the death of the testator, . . had been sold by the defendants, and has been bought in by themselves, . . at an undervalue,"

Held: [435] "The plaintiffs, as next of kin of the testator, have a right to treat the sale . . as a nullity, and to have it resold for the purposes of a partition among them." [Battle, J.]

Parker v. Parker, 4 Jones Eq. 439, August 1859. Will: "to an idiot son . . 'three negroes, Jack, Jim, and Till, and Till's increase . . that my [other] sons . . be constituted guardians'"

Douthett v. Bodenhamer, 4 Jones Eq. 444, August 1859. [445] "The bill . . charges, that the defendant [tenant for life] removed two of the slaves to Georgia and tried to sell them to persons, who were by agreement with him, to carry them to Texas, and that he secretly removed the rest of the . . slaves from South Carolina, and has endeavored to sell them in absolute right;"

Sawyer v. Dozier, 7 Jones N. C. 7, December 1859. [8] "All my perishable estate . . together with . . Isaac, and . . Jinny, I wish my executor to sell . . and purchase two or three negro boys"

Fessenden v. Jones, 7 Jones N. C. 14, December 1859. "The plaintiff, . . a physician, declared for medicines and medical services rendered to a slave,"

Hurdle v. Richardson, 7 Jones N. C. 16, December 1859. Bond: "Twelve months after date, we . . promise to pay . . Hurdle, . . ninety-five dollars, . . for the hire of a boy, Wesley, for . . 1858, and comply with the usual terms of clothing." [17] "Wesley, served the defendant until the middle of December, 1858, when he ran away, . . On the 24th of December, the slave was apprehended . . at the request of the defendant, and while the persons . . were taking him to Richardson, the plaintiff demanded him of the captors and took him . . On the same day, . . without the consent of the defendant, gave Wesley a permit, in writing, to pass and repass, and to procure work in the counties of Gates, Chowan and Perquimons, until the 1st of January ensuing."

Held: the plaintiff is entitled to recover the amount of the bond and interest.

State v. Long, 7 Jones N. C. 24, December 1859. [25] "Soles . . was at the house of the defendant . . about eight or nine o'clock [at night]: that he heard a noise like a tap on the door; that the defendant opened it, and he saw a negro . . but who it was, he did not know; . . the defendant went out, and shortly afterwards came back . . with a jug, that would hold a quart or more, which he filled with liquor, . . and carried it out; . . Beach . . son of . . the owner of Luke . . went to watch,

whether the defendant traded with the said slave; . . saw Luke go . . with a jug, . . [26] Verdict for the State." Judgment thereon, affirmed.

Lucas v. Nichols, 7 Jones N. C. 32, December 1859. [33] "Action of slander, . . The plaintiff was a single woman. . . that . . defendant said . . 'she had got a new sweet-heart, Wesley Dean's Pete; it used to be Ben Lucas and sometimes Jake Calicoat;' . . all . . slaves, . . witness testified, that . . after suit brought, he was asked by the defendant, whether he thought the plaintiff would injure him, and on receiving an equivocal reply, he said, 'he would do her some,' for he had been told she had two or three black children. . . [34] Verdict and judgment for the defendant." Affirmed.

State v. Davis, 7 Jones N. C. 52, December 1859. "Indictment for assault and battery, . . The defendant was a free negro, . . Hart [constable] . . had in his hands a notice directed to the defendant, for him to show cause why he should not work on the streets . . for not having paid his taxes.[1] . . [53] arrested the defendant, and attempted to tie him, when the latter struck him. . . Verdict and judgment for the State,"

Judgment reversed and *venire de novo*: [55] "Is not this gross oppression? . . What degree of cruelty might not the defendant reasonably apprehend after he should be entirely in the power of one who had set upon him in so . . lawless a manner? Was he to submit tamely? . . we think his Honor ought to have instructed the jury to find the defendant not guilty." [54] "in such a case, a resort to the natural right of self-protection is not inconsistent with that feeling of submission to white men which his lowly condition imposes, and public policy requires should be exacted." [Pearson, C. J.]

State v. Elick (*a slave*), 7 Jones N. C. 68, December 1859. "Indictment for an assault with intent to ravish, . . having gone by herself about a quarter of a mile, she heard some one . . a negro . . seized her . . she halloed . . until . . Mr. and Mrs. Hill, came to her relief; that when the fellow saw them coming, he . . ran off into the woods." He had previously told his intention to three witnesses. [69] "The character of the female was proved to be very good . . [70] Verdict, guilty."

Judgment thereon, affirmed: [71] "We . . find no reason why judgment of death should not be pronounced"

Musgrove v. Kornegay, 7 Jones N. C. 71, December 1859. "a writ of *habeas corpus*, . . Simon and Lucretia, colored children, were brought before his Honor upon the petition of [their father] . . and the defendant showed as the cause for detaining them, that the petitioner . . had executed a deed . . purporting to bind them to him as apprentices. . . Simon was over twelve . . at the time . . and assented . . and served the defendant three or four years, but did not sign the deed; . . Lucretia, was only three or four years of age at the time, and did not assent . . His Honor . . [72] ordered the infants . . to be redelivered to the defendant."

[1] Ordinance of Newbern: "Ordered that all free negroes, who have not paid their taxes, shall be made to work on the streets two days for . . every dollar of tax due . . and if he refuses . . upon due notice . . he shall pay a fine, . . [53] not exceeding $10."

Order below reversed: as Simon [76] "did not execute the deed, Kornegay acquired no property under it, . . the proper order is to discharge the infant [Simon] and permit him to go where he pleases. . . In respect to . . Lucretia, . . the proper order is to restore her to the custody of the father;"

Brown v. Brooks, 7 Jones N. C. 93, December 1859. [94] "Received from Jollie, Hanks and Holt three hundred dollars, in part payment for a negro man, . . Ned, which negro has runaway, and I hereby bind myself to deliver said negro by September Court . . or forfeit to the said firm . . fifty dollars." Ned, "at the time of the declaration, was still runaway,"

Jones v. Baird, 7 Jones N. C. 152, December 1859. [153] "In 1846, . . Baird sold William, . . of about the age of thirteen, a child of one of the female slaves conveyed by Mrs. Baird to her trustee, . . at . . $325, . . his full value. This slave was, during the same year, taken . . to . . Alabama, and sold there,"

H. B. White v. Cline, 7 Jones N. C. 174, December 1859. "1851, . . Elijah, and his then master, C. L. White, went together to . . [175] California, . . the slave, if faithful, was to get a certain amount for his services, . . after about four years service, the master . . paid over several hundred dollars to the slave, who, in the fall of 1854, voluntarily, and with leave of his master, returned to North Carolina, . . and surrendered himself in bondage to H. B. White, the agent of his master, . . handed over to . . H. B. White, the money so earned . . with the request that . . White would manage and take care of it for him; . . White thereupon loaned four hundred and ten dollars of [it] . . to the defendants, who executed . . the bond [[176] 'payable to the master's agent *for the use of the slave,*'] declared on; that afterwards . . H. B. White, under instructions from C. L. White, sold . . Elijah, and transferred the said bond . . to . . Lytaker, who brings this suit. . . The Court being of opinion with the defendants, that the bond is against public policy, and . . void, gave judgment accordingly, and plaintiff appealed."

Judgment reversed, and [178] "a judgment here for the plaintiff." [176] "As long as the master keeps the actual, as well as the legal control of the fund, it can no more endanger the public safety, than any other portion of his property. . . The fact, that the slave is nominally the owner of it, is of no public concern. . . [177] That he was in an eminent degree industrious and economical, is apparent from the large sum which he accumulated, . . The history of the transaction discloses, prominently, characteristics of the relation between master and slave, not unfrequently found upon well governed plantations—relations of mutual good will . . The duties . . belonging to the relation of master and slave . . are . . diverse. Among them, on the part of the master, is that of giving strength and moral health, and consequent permanence to the system itself, as a part of the foundation upon which rest our social affairs. . . [178] Among the incentives to a virtuous and diligent course of conduct, stands prom-

inent a system of rewards, which, we confidently think, may be developed to any desired extent, without violating either the express law, or general policy of the country." [Manly, J.]

Watson v. Davis, 7 Jones N. C. 178, December 1859. [179] "The account . . sets out 'dealings' by the plaintiff, as agent of the defendant, in carrying to the south and selling a number of slaves, to wit: charges for travelling expenses; for board of slaves; for clothes; for medical bills paid, . . with credits for the price of slaves sold;"

State v. Willis (*a slave*), 7 Jones N. C. 190, December 1859. "indictment for burglary, . . a cabin . . was entered on the night . . and . . several pieces of bacon, forcibly taken from her. The entry was effected by . . going down the chimney . . [which] was in a ruinous condition. . . Verdict, . . guilty." Judgment thereon, affirmed.

Darden v. Cowper, 7 Jones N. C. 210, December 1859. [211] "declared his purpose to be to wear it [the land] out, and then remove his slave to the south-west."

State v. Oscar (*a slave*), 7 Jones N. C. 305, December 1859. "indictment . . for an assault upon a white woman, with an intent to commit a rape," "one of his fellow-servants, . . Harry, . . gave evidence tending to criminate another man, and to exculpate him. . . made some statements, which . . induced the solicitor to say that he should contend that the witness was an accomplice . . [306] The counsel for the prisoner then called his master, who testified that . . Harry, and the prisoner had shortly before had a fight, . . The solicitor then called a witness . . permitted . . to state that he saw Harry and prisoner conversing together the next morning . . apparently friendly, . . his Honor said to the jury, . . [307] 'To exclude . . rational doubt [as to the assault and as to the identity of the prisoner with the perpetrator], the evidence should be such as that men of fair ordinary capacity would act upon in matters of high importance to themselves." [305] "The prisoner was found guilty, and appealed"

Judgment reversed, and a *venire de novo*: the charge to the jury was erroneous.

Harrell v. Davenport, 5 Jones Eq. 4, December 1859. "William D. Davenport was shot and killed by two of his slaves, Ganza and Aaron, . . February, 1858. . . tried and convicted . . and afterwards executed. Another slave, George, . . was acquitted. In the will of . . Davenport, George is given to the children of William H. Davenport, Ganza to . . [5] Harrell, . . executor and plaintiff . . and to his wife, and Aaron to the children of Samuel W. Davenport. On the arraignment of these slaves, the family of the testator, and the public, were greatly incensed against them, and no counsel having been secured for them, his Honor . . ordered . . Harrell, to have them defended in the best manner, and to pay the amount necessary . . out of the estate . . considerable sums were paid out . . After the acquittal of George, he was delivered by the executor to the children of W. H. Davenport, and sold by them, and the money

divided among them. The widow of . . W. D. Davenport dissented from his will, . . the apparent value of each of these slaves was $1.200, at the testator's death."

Battle, J.: [7] "The widow . . claims that, in ascertaining the share of the personal estate to which she is entitled, she has the right to have . . Ganza and Aaron . . valued as if they had not committed any felony, . . This claim is ungracious and unfounded. Those slaves were . . of no value; just as if they had had the small-pox . . at the death of the testator, and had died thereof, soon after. . . [8] the necessary costs and expenses of . . defense [of Ganza and Aaron], must be borne by the general assets of the estate. The case of George is different; . . the legatees to whom he was bequeathed, . . took him *cum onere*, . . The bequests of . . Ganza and Aaron, were specific, and . . the loss . . by hanging, must fall on the persons to whom . . given, just as if the slaves had died a natural death."

Gossett v. Weatherly, 5 Jones Eq. 46, December 1859. "under articles, entered into in 1847, the testator Isaac, and the defendant, Joseph ['the only son'], . . with . . Close, entered into a copartnership in the business of buying and selling slaves, . . carried on until 1850, when the last . . withdrew, . . [47] The business was thence carried on extensively by . . Joseph A. Weatherly, till the death of Isaac Weatherly, . . March, 1858," The plaintiffs, the female children of Isaac and their husbands, "call for a discovery of . . profits, and a full account . . claim, also, . . as falling into the residuary fund, a negro girl named Margaret, attempted to be emancipated . . and a tract of land given to her. The facts . . In 1844, Isaac Weatherly . . [48] delivered to the defendant the following instrument: . . 'Georgia, . . Received of Jos. A. Weatherly five hundred dollars, . . for . . Lizza, . . aged twenty years, and Margaret, her daughter, a mulatto girl, aged four years, and Bill, her son, a mulatto boy, aged two years, both to be free at . . eighteen and twenty,' . . By the 4th clause of his will, . . Margaret, is simply given to the defendant. . . By a codicil, . . 1857, . . 'I will . . my yellow girl, Margaret, at the discretion of my executors to be emancipated, and give her . . two hundred dollars. . . the balance [of the tract], I will to . . Margaret, . . and desire my executor to see that she gets the benefit of the said land.' . . [49] The answer of the defendant states . . that the nett profits of his business, since 1850, is about $25,000; . . [50] The commissioner . . refused to charge the defendant with the value of . . Margaret,"

Held: [53] "the defendant must be charged with the value of this slave, which will fall into the residuary fund." [52] "If the testator had stopped after directing . . Margaret, to be emancipated, and giving her two hundred dollars, we should have been slow to come to the conclusion, that his intention was to tear asunder all of the past associations . . and to have her sent *alone* . . and turned loose among strangers in a foreign land, with an allowance of $200. But all doubt is removed . . [53] If she was to be sent out of the State, why give her a tract of land? He

had an abundance of cash means, and money was what she would need, provided it was intended . . that she was to leave the State." [Pearson, C. J.]

Meadows v. Moore, 5 Jones Eq. 54, December 1859. Moore's will: "that my negroes select for their masters whomsoever they wish to be their owners. . . I will and bequeath to each of my [eight] negroes, . . fifty dollars each."

Held: [56] "The legacies . . to each of eight slaves, do not pass from the estate, (for the want of competent persons to take) but remain integral parts thereof,"

Futrill v. Futrill, 5 Jones Eq. 61, December 1859. [62] "took charge of the slaves, Lawson and Moses, who were mechanics, and kept them employed at wages,"

Feimster v. Tucker, 5 Jones Eq. 69, December 1859. Will of William Feimster: [70] "My negro man Lindsey and his wife, . . and their two youngest children, Lindsey Walton and Louisa, at the death, marriage, or removal of my wife out of the county of Iredell, . . be freed by my executors, under the especial care of my son, Abner. I now . . bequeath to my servant, Lindsey, one half of my smith tools, my rifle gun and shot bag, subject . . to the use of my wife as long as they live together," His widow "had lately died, and . . there were several slaves descended from . . Louisa, . . Lindsey and his wife . . are over fifty years old, . . faithful, obedient and trustworthy, and rendered meritorious services, both to the testator and his late widow;"

Held: the provision as to Abner's care and the bequest of the tools, gun and shot bag, [72] "slight as they may be, show that the testator had no idea that Lindsey was to be carried out of the State, . . very certain that the testator did not intend to have his wife and children separated from him; . . [73] the trust for the emancipation . . can [not] be carried into effect under . . sections [46 and 47, of chapter 107] of the Revised Code, . . but, as . . Lindsey and his wife . . are above . . fifty years, they may be emancipated by virtue of the 49th section . . if the executor can prove meritorious services, and will, otherwise, comply with the requirements of that section. . . [74] the [other] slaves in controversy . . belong to the next of kin" [Battle, J.]

Paschall v. Hale, 5 Jones Eq. 108, December 1859. $753 was paid in 1853 for a negro man.

Harrison v. Everett, 5 Jones Eq. 163, December 1859. Will of Everett, who died in 1858: "I desire that my negroes shall have the privilege of selecting their masters, their value to be ascertained by two disinterested men, one selected by the master they may choose, and one by my executors."

Held: "It is settled in this State that such a humane provision . . is not against the policy of our law,[1] . . [164] The only argument against it, is that the slave is incapacitated by his condition, . . and that it has

[1] Washington *v.* Blount, p. 169, *supra*; Delap *v.* Delap, p. 197, *supra*.

been so held in a sister State.[1] . . We have very recently held directly the contrary;[2] and are unable now to perceive any reason for changing that opinion." [Battle, J.]

Kearney v. Harrell, 5 Jones Eq. 199, December 1859. [200] "the hire of slaves that had worked at the college building ['a female academy' in Murfreesboro],"

Gums v. Capehart, 5 Jones Eq. 242, December 1859. In 1852 a life tenant sold four slaves to Capehart, "who kept them for a short time, and . . then sold them to . . Nelson, a negro-trader, from a distant county of this State, . . he executed the following . . 'Received of . . Nelson and Co., eleven hundred and twenty-five dollars, . . [243] for . . four negro slaves, which money I . . agree to refund, should they be prevented from proceeding to Virginia, with said slaves, on condition they are returned to me, unless they should be taken from . . Nelson and Co., by process of law—the above obligation to be void in . . ten days, or more, if they cannot sell them in so short a time.' . . Nelson proceeded unmolested to Richmond . . and there sold the slaves to a gentleman in Tennessee, and they have not been since heard of. . . Nelson . . say [*sic*], that Capehart sold him the full estate in said negroes."

Held: [244] "Capehart sold . . for the purpose of defrauding" the remaindermen. [245] "The decree will require . . Capehart, to pay . . $1125, . . with interest from 1854," the date of the expiration of the life tenancy.

Poston v. Gillespie, 5 Jones Eq. 258, December 1859. [259] "It turned out that the property . . had proved insufficient to pay the debts . . and one of the slaves bequeathed specifically to his wife and child, would have to be sold . . A negro man bequeathed to her infant son, had no wife, and it was agreed between Mrs. Gillespie and her father, that he should be taken, instead of falling on one of the two in which she had a life-estate, who had wives in the neighborhood,"

Branch v. Branch, 5 Jones Eq. 268, December 1859. Branch's will, made in Tennessee: [269] "I . . request my executors . . to sell all . . with the exception of my negroes and five trunks . . I desire that such of my negroes, as may be necessary to wait on and attend to my children, go with them to North Carolina. I greatly desire that my negroes shall be humanely treated, and should prefer, if it can be done, that they be hired out, privately, to humane persons, even at a less price, and, if possible, in families together."

Latham v. Bowen, 7 Jones N. C. 337, June 1860. [338] "1859, . . a deed of marriage settlement, conveying all her estate, which consisted of slaves,"

Grandy v. McPherson, 7 Jones N. C. 347, June 1860. [348] "McCoy testified that the slave . . staid in a cabin on his land, . . [the consta-

[1] Bailey *v.* Poindexter, 14 Grattan 132 (vol. I. of this series, pp. 243-244); Williamson *v.* Coalter, 14 Grattan 394 (*ibid.*, pp. 246-247).

[2] Redding *v.* Findley, p. 223, *supra*.

ble] came to him [in January] . . in his field, . . told him he had levied execution on the . . woman; that she was too far gone in pregnancy to remove her then, and engaged him to take care of her until he could remove her, which he did in March, still previously to the birth of the child"

Newby v. Jackson, 7 Jones N. C. 351, June 1860. "action of trespass *vi et armis,* . . about . . 2 o'clock, A. M., the defendant shot a person near the shelter of . . Leigh, . . whom he supposed to be a certain runaway slave, named Tony; that he first hailed the person shot, and commanded him to stop, which he refused to do; . . so dark as to make it impossible to distinguish . . that about 4 o'clock . . the overseer of the plaintiff was aroused, and found the boy, Jeff, (the slave in question) badly shot . . died in a few days" "The plaintiff's counsel . . asked the witness, whether he had heard of any other person's being shot in the neighborhood, and at that time; . . ruled out. . . [352] Verdict for the defendant."

Judgment thereon reversed and a *venire de novo*: [354] "the evidence ought not to have been rejected on the ground of its being hearsay"

Wright v. Howe, 7 Jones N. C. 412, June 1860. "The maker of the will was an aged person of color, . . that she looked to Mr. Wright, the sole legatee, for counsel as a lawyer, and for protection, habitually, and, occasionally, for small sums of money . . also, that he had the collection of moneys due her for rents. . . her husband's wish was, that she should give her property in that way, and that she had got the whole property from her husband," The will was upheld.

Jones v. Norfleet, 7 Jones N. C. 473, June 1860. In 1858 Lloyd [475] "built . . a rude cabin for an aged slave, whom he had in charge, to which was attached quite a small garden, which was used by this slave." In 1860 he made a will, devising [474] "to Mary Ann Jones, a free colored woman, . . the lot of ground and the house thereon erected . . on which she now lives."

State v. Daniel Worth,[1] 7 Jones N. C. 488, June 1860. "The defendant was indicted under the 16th section of the 34th chapter of the Revised Code, for the publication and circulation of a book, . . 'The Impending Crisis of the South, by Hinton Rowan Helper[2] of North Carolina.' . . The second count . . charged that the defendant sold and delivered a copy . . to . . Bowman. The extracts compare the existence of slavery to the introduction of small-pox into a community, putting strychnine into a public well, and the turning loose of mad dogs . . and that it was the imperative duty and the determined purpose of the author and his associates to *abate the nuisance* and *exterminate the evil,* even at the cost of blood, . . asserted that slavery leads to murder, . . that 'slave owners are more criminal than common murderers;' that masters

[1] For details of the trial, see Bassett's *Anti-Slavery Leaders of North Carolina* (Johns Hopkins *Studies,* ser. XVI., no. 6), pp. 24-27.

[2] *Ibid.,* pp. 11-24, 27-29.

of slaves are worse than thieves, and with many inflamatory epithets . . a purpose is declared to effect the abolition of slavery; and unless the owners will consent to do this voluntarily, and to give each slave sixty dollars, it is threatened . . [489] to be effected by the abolitionists of the north with the assistance of the slaves, who, it says, 'in nine cases out of ten, would be delighted with an opportunity to cut their masters' throats.' . . the defendant had sold . . copies, in bound volumes, to other persons . . Verdict for the State."

Judgment thereon, affirmed: [492] "it was not necessary . . that the sale should be to a slave or a free negro, nor . . read in the presence of either. . . The Legislature seems to have assumed, that if a circulation, within the State, was once established, that its corrupting influence would inevitably reach the blacks. The enemies to our peace act upon this assumption, . . the inevitable tendency . . would be to make blacks discontented. . . [493] the expressed object of the book . . is to render the social condition of the South odious, . . to place slave holders and their slaves in . . hostile array, and thus, by force, to bring about an extinction of slavery." [Manly, J.]

Swann v. Swann, 5 Jones Eq. 297, June 1860. Will: [298]. "I desire . . that my plantation and . . my negroes, Robert, a cooper, and Hannah, shall be sold . . and the proceeds applied, first, to the payment of my debts. . . that . . my executor shall invest $400, in the purchase of a maid-servant for my daughter,"

Rogers v. Brickhouse, 5 Jones Eq. 301, June 1860. Will, dated 1852: [302] "I . . bequeath to my grandaughter [*sic*], Ann Cahoon, a negro girl, named Hasty, and her increase." "At the time of the making of the will, Hasty had one child, about 18 months old, which was not named in the will, and has had no other . . Ann . . claims this child . . the others insist that it must be sold"

Held: [304] "The late case of Williamson *v.* Williamson,[1] . . shows, beyond all doubt, that . . Ann . . does not take the child"

Reeves v. Long, 5 Jones Eq. 355, June 1860. Will of Baldwin, who died in 1859: "It is my will that my negro man, Jesse, to [*sic*] choose his own master, that will pay to my executors five hundred dollars, in nine months after my decease, and direct them to make title" "The testator left a large amount of personal property, more than sufficient to meet his liabilities, without recourse to the slave . . the slave selected . . Reeves . . Reeves . . tendered . . a bond, with sufficient sureties, . . The defendants [executors] refused to make title or deliver the slave."

Held: [357] "the direction by the testator . . is not against public policy." [356] "The price fixed is not so grossly inadequate for a man, between forty-five and fifty, as to vitiate this licence." So to hold "would be to exclude from the system of slavery every indulgence . . or at least, so to hedge it about . . as to make it stiff and harsh, and thus impart to it an aspect it does not now possess." [Manly, J.]

[1] P. 224, *supra*.

Myers v. Williams, 5 Jones Eq. 362, June 1860. Will of the Hon. Lewis Williams, dated 1841: "In regard to my negroes . . all of them who are above 25 years of age, shall be left to my brother, N. L. Williams, in trust, for the use of his children, . . but he . . is not to be accountable . . for the proceeds of the labor . . [363] until the . . children are 21 years of age; my object being, that . . [he] should use the proceeds . . to enable him the better to educate his children, as well as to support the . . negroes. . . it is my will . . that all of my negroes, who are under 25 years of age now, should, when they arrive at 25 . . be emancipated and sent to Liberia, . . provided, they should choose to be . . their choice . . is to be ascertained by a private examination by three justices of the peace, . . If the said negroes should not choose to be emancipated . . they shall be held in trust . . as . . the negroes . . above 25 . . my reason for making the distinction . . is, that those over 25 years would not, perhaps, better their condition in life, and they might be too sickly if sent to Africa, while those under 25 . . might be less sickly, and might make out better in Africa. . . The issue . . of [all] . . are all to be emancipated and sent to Liberia, if they choose . . after they shall arrive at 25 . . If the laws of the State prohibit emancipation, . . then all . . must go to the children of my brother," Codicil, of the same date: [364] "If any of the negroes choose to go to Liberia, . . they are to be hired out for one year, to raise the money" A bill was filed by a daughter of N. L. Williams and by her husband, [362] "against N. L. Williams, . . executor . . and against his other children, and against the Solicitor of the 6th Judicial Circuit of the State, as the legal representative of . . [the] negroes proposed to be emancipated"

Battle, J.: [365] "we regret that we have not been favored with an argument from the public officer who was made a party . . for the purpose of protecting the rights . . of the slaves. . . [366] The objections to . . the emancipation . . are mainly of three kinds. *First*, because it is against the policy of our law, to establish a nursery of young negroes with a view to their being emancipated at a certain age, if they should so desire. *Secondly*, because . . the will created a perpetuity, . . *Thirdly*, because, with regard to most, if not all the slaves embraced . . the will cannot be carried out . . without great difficulty, and without doing violence to the humane wishes . . expressed . . [367] the true principle of our law, in relation to . . emancipation . . is, that it *permits*, but does not *favor* it, . . [368] The very fact, that the same person who is to have the services of the slaves, until they arrive at the age when they may choose their freedom, . . will have a strong tendency to induce him to relax the reins of a necessary discipline, with a hope of influencing their choice of bondage for the benefit of his children. . . operating injuriously, not only to the favored slaves . . but, by . . bad example to his other slaves and to those of his neighbors. In our opinion, the policy of allowing the prospective emancipation of slaves, is carried far enough already, and . . we do not feel disposed to go further, . . [369] Besides . . there will be an insuperable difficulty, in every instance of a

female, to prevent her making a choice of freedom. In nine cases out of ten, a female of that age will have one or more very young children, which, if she elected emancipation, she would have to leave, . . In most cases, too, her hire for one year . . would be insufficient [for the expense of transportation] . . the executor must hold these slaves upon the alternative trust, indicated by the testator." Decree accordingly.

Lea v. Brown, 5 Jones Eq. 379, June 1860. Deposition of Dr. Roane: [380] " 1855, . . during the last illness of Mr. Nathaniel Lea, I was at his house on a professional visit, and he remarked that his servant, Milly,[1] had . . accumulated [some money] by selling, for years, with his permission, surplus articles . . such as fowls, butter, ice-cream, etc., and by manufacturing and selling . . bed-clothing, which he wished me to take charge of and loan out—seeing that she had the benefit . . I [finally] consented . . In reply to the question by her master, . . Milly stated that she had already several hundred dollars in the hands of Mr. . . Johnson, and that she had been collecting some other debts amounting in all to eleven or twelve hundred dollars. The money . . was carried by her (I presume) to . . Johnson, a merchant . . who shortly thereafter handed me his individual note, payable to myself, for twelve hundred dollars" A bill was filed [379] " by the residuary legatees against the executor of the will of . . Lea, for an account . . [380] commissioner . . reported, an exception was taken [by the executor] to a charge of $1560 [the principal and accumulated interest of the note],"

Exception allowed: [381] " This is not a debt due to the testator, and the executor had no means of collecting it, either at Law or in Equity. . . This Court has . . treated it as commendable, to adopt a system of rewards, by which a slave is allowed a half, or a whole day, every time 'the crop is gone over,' to work a patch of cotton, corn or watermellons [*sic*] and the like, and to sell the proceeds, so as to make a little money . . to buy small amounts of luxuries—sugar, coffee, tobacco, etc., and to indulge a fancy for 'finery in dress,' for which the African race is remarkable; but when it comes to an accumulation of $1500, the question is a very different one, . . [382] The privileges allowed a slave, . . to enable him to acquire that amount of money, extra, must, necessarily, in some degree, run counter to the policy of the statutes by which slaves are not . . allowed to hire or to have the use of their own time. . . calculated to make other slaves dissatisfied, . . not calculated to promote good morals, and should the evil become one of common occurrence, may call for some legislative enactment." [Pearson, C. J.]

Love v. Brindle, 7 Jones N. C. 560, August 1860. " action of debt on a note without seal, . . taken from defendant by a slave belonging to the plaintiff, but for the profit . . of the slave; that this slave had been permitted by his master to own and control a jackass, which he carried to Macon county, and there sold to the defendant, who gave the negro a horse and the note . . [561] Verdict and judgment for the defendant,"

Affirmed: " It is against the policy of our law for a master to permit his slave to own a jackass, horse, or other animal of the like kind, . .

[1] See same *v.* same, p. 204, *supra.*

tempted to . . steal, . . to procure the means of supporting his animal, and the allowance to him . . of the time . . necessary to purchase, manage and sell the beast, will have a tendency to make other slaves dissatisfied . . and thereby excite . . a spirit of insubordination. . . [562] The case of White *v.* Cline,[1] . . is not opposed . . because the money, which White lent to Cline, was earned in California," [Battle, J.]

Doggett v. Moseley, 7 Jones N. C. 587, August 1860. Will, 1829: " reserving the first child, . . Jinny may have for . . the son of my son . . when he arrives at mature age."

Foster v. Mills, 7 Jones N. C. 606, August 1860. " The brother of the defendant [607] " was selling slaves in the south-west in 1852; that he went to Columbus, Mississippi, and there met the defendant with some fifteen slaves, and finding them badly clad, he bought, and with his own means paid for clothing for them to the amount of eighty dollars; . . took charge of the slaves for sale, and sold them—some for cash and some on a credit, . . expenditures . . were all necessary to the business of making a favorable sale of the slaves,"

Henderson v. Crouse, 7 Jones N. C. 623, August 1860. "evidence of the acts and declarations of the slave before, at, and after the sale, which . . tended to show that he had chronic rheumatism at that time." Admissible.

Sleight v. Watson, 8 Jones N. C. 10, December 1860. [11] " On the first day of January, 1857, we promise to pay . . four hundred and ninety-five dollars . . hire of [three] negro men, . . for the year 1856, and . . to furnish said negroes with the usual clothing."

State v. Peter (*a slave*), 8 Jones N. C. 19, December 1860. " Indictment for a rape, . . about daylight . . the prisoner came to her [N. C.'s] room . . that she told no one of it until about two weeks afterwards, . . [20] that Peter had a wife at Mrs. Howard's; that she did not like him nor his wife, because they were saucy to her; that four or five days after the offence was committed, Peter came to the house where she [N. C.] and her father and brother were, and sitting down familiary [*sic*] in the piazza, had a conversation with her father and brother; that she did not tell her father, because she was afraid and ashamed to do so; . . Burroughs stated, that he arrested the prisoner . . 6th of June, and tied him in his kitchen; that he overheard a conversation between the prisoner and a negro woman, . . the latter said . . ' what did you do it for? did you not know it would carry you to the gallows? . . the prisoner replied, ' I am sorry for it.' . . The counsel for the defendant, insisted that the witness [N. C.], . . was not to be believed; . . [21] Verdict, guilty."

Judgment thereon, affirmed: [22] " the word ' person ' in chapter 34, section 5,[2] does embrace a slave."

State v. Clara (*a slave*), 8 Jones N. C. 25, December 1860. Clara " was indicted with her son Jim, . . as an accessory before the fact, for

[1] P. *232, supra.*
[2] Revised Code.

killing their master, . . and they were put on trial together. Jim was convicted, and as to [Clara] . . a slave, . . Sarah . . [testified] that on the Sunday . . before the murder, (which was on Wednesday night,) the prisoner who . . usually cooked for [the deceased] . . looked into a side-board drawer for bullets, but did not find any; she then told the witness, that if she would get some bullets, or . . some caps and lead for some person, she would be well paid . . that witness asked . . what she wanted with these things . . she answered, 'never mind; no harm.' . . night of the same day, Jim . . asked her for the caps, and asked her if his mother did not tell her to get the caps and lead for him. The witness replied, that Clara did not call any names. . . told Jim there were no caps . . Jim said, 'hush your lies, for he saw some in Mass. Roberts room, on the mantle-piece.' That witness . . gave them to Jerry . . to give to Jim. . . Monday night . . she gave Jim a piece of lead. . . Tuesday morning . . the prisoner asked . . if she had given the things to Jim; . . returned answer that she had. . . [26] Monday . . before the murder, . . Clara, said . . that 'she felt sorry for her master—that he was going to die soon, and asked witness if she did not hear the hen crow . . every morning when he came out.' The witness said she had not heard it. . . after the murder . . the prisoner said . . if Jim did kill his master, or had it done, it was no harm; for it was life for life; and she had often heard that when it was life for life, it was no harm. That Jim was her child, and she would not speak against him. . . the deceased died of gun shot-wounds; . . was found with a [bloody] bag drawn over his head; . . [27] Verdict, guilty." Judgment thereon, affirmed.

Davis v. Golston, 8 Jones N. C. 28, December 1860. "On or before 1st of January, 1856, we [partners] . . promise to pay . . five hundred and forty-five dollars, for the hire of . . [four] negroes, . . for the present year [1855]; and . . to clothe them and furnish them with shoes, hats, and four blankets, and pay doctors' bills."

Morrison v. McNeill, 8 Jones N. C. 45, December 1860. [46] "Nancy and her children . . 1854 . . carried . . to . . South Carolina, . . the following winter or Spring . . sold . . in . . Mississippi."

Drake v. Bains, 8 Jones N. C. 122, December 1860. "he heard Drake tell the defendant, on the day of the sale [1856], that he would take Jack at $900, and his wife and children at $1,900; . . defendant assented. . . Drake then turned to the slave, . . and said, 'get your things, your wife, etc., and go to my house;'"

State v. Sam (a slave), 8 Jones N. C. 150, December 1860. "The prisoner was indicted and put on trial with Noah and Perry, for the murder of one George Askew, by burning the house in which he was asleep. There was a count charging the death to have been produced from a stick. . . Ruffin gave testimony as to the confessions of Sam. . . was asked by the prisoner's counsel, 'if he had not taken up and whipped other negroes in the neighborhood.' . . objected to . . The Court asked . . 'the purpose of the question.' Defendant's counsel answered, 'to show that he has been very active about the matter.' The Court rejoined, 'if

he has, it is nothing to his discredit.' The testimony was ruled out, . . excepted. . . [151] A *nolle prosequi* was entered as to Noah. Perry was acquitted, and a verdict of guilty as to Sam, who, upon judgment . . against him, appealed."

Judgment reversed, and a *venire de novo*: [153] "although he may be guilty, his guilt has not been proved according to law." [152] "we . . understand his Honor . . to have used the word ['discredit'] in the sense of not being censurable, . . if he had . . whipped other negroes . . touching the crime then under investigation. . . such remarks should not come from the bench, because they are apt to betray feeling. . . When a witness has become so much excited, by reason of a horrible crime . . as to be induced 'to take up and whip negroes,' for the purpose of ferreting out the offenders, his excited state . . would have a tendency to make his testimony less reliable, . . the evidence . . ought to have been received," [Pearson, C. J.]

McDowell v. Bowles, 8 Jones N. C. 184, December 1860. "an action . . for slander, . . The plaintiff declared that he was a clear blooded white man, and a regular licensed minister of the Baptist Church; that the defendant said . . at . . election, where plaintiff came forward to vote, that he (plaintiff) had no right to vote; that he (plaintiff) was a free negro, and said, 'if you let free negroes vote, here, let Zach. Warden (who is a free negro) vote also.' . . no special damage laid or proved."

Held: "the words . . were not actionable."

Odom v. Bryan, 8 Jones N. C. 211, December 1860. "hire of . . Dave, from November 5th, 1857, to January 1st, 1859. . . $100, on January 1st, 1858, and $187.50, on January 1st, 1859."

State v. Norman, 8 Jones N. C. 220, December 1860. "an indictment for assault and battery, . . committed on the body of . . Richard Fisher, a free man of color, . . special verdict: . . 'Fisher had before that time been convicted of larceny, . . and by the Court was ordered to be sold for the fine imposed, to cover the costs, and was so sold for five years to . . [221] Peacock. Before the expiration . . Fisher was taken up on the charge of killing . . Hussell, . . found dead in his yard, and the defendant gave him five licks to make him show where the gun was, with which he killed Hussell. Peacock was present when Fisher was whipped, and gave his consent to it, and said it ought to be done.' . . his Honor was of opinion that the defendant was not guilty, and so adjudged;"

Judgment reversed, and judgment entered for the state: "Fisher . . stood . . in the relation of apprentice to Peacock.[1] . . No free person, of whatsoer [*sic*] color, can, according to law, be thus coerced. . . the master cannot whip for an unlawful purpose." "his assent, therefore, cannot legalise it. . . [221] every blow is an unlawful battery." [Manly, J.]

Lane v. Washington, 8 Jones N. C. 248, December 1860. [249] "prior to the heavy snow storm of January, 1857, . . the agent of the plaintiff . . hired . . [four] slaves to the defendants, . . partners in a contract

[1] Rev. Code, ch. 107, sect. 75.

for making the Atlantic Rail Road, at . . eighty cents per day; . . not to be carried below Bear creek, . . next day, Burdick [one of the partners] told him that he wished to take the . . slaves below Bear creek, into the edge of Dover swamp, . . that he (witness) told him that if they were well taken care of, he would as soon they should work there as any where; that Burdick replied that they should be well taken care of, as defendants had good accommodations there for a hundred hands; that he (witness) replied that on those terms they might go; . . gone some eight or ten days, when Wright, George and Jack came home frost bitten; that Wright died of phneumonia [*sic*], about ten days thereafter, and the other two were laid up about two months; . . never saw Abram after the hiring, but learned that he died in Kinston; that this was about the 29th of January, 1857, a short time after the heavy snow storm . . during the week succeeding the return of the slaves, . . he examined the shanties erected by the defendants for . . the hands; . . one at the Heritage place, where the overseer stayed, . . [250] a square pen, made of pine poles, with large cracks, through which one might thrust his double fists, . . no shutter to the door; that the top . . would not shed water; . . no chimney and no floor, no bed clothing and no cooking utensils, and that the fire was made in the middle of the house. . . another [similarly built, but with] . . loose planks laid down for flooring; that along the centre . . logs were placed . . and earth . . between them as a place for building fires; . . no chimney, but . . an aperture, three feet wide, at the top of the roof, . . this shanty had a door to which there was a shutter. . . other shanties . . made of cross ties . . placed on top of one another, to the height of some six feet, on three sides, . . one . . side entirely open, . . nothing like as good as are ordinarily used on works of the kind, and were nothing like as good as an ordinary horse stable. . . an overseer . . told him that if he had been well, the slaves . . would have been better attended to, ' that it was a bad chance there any how; ' . . [251] Dr. C. F. Dewey . . was called to see the boys . . that they were frost bitten—George badly—Wright not so badly, and Jack slightly; that Wright died in about two weeks, of typhoid pneumonia, and that he complained of having suffered from excessive cold for two weeks. . . that the other two would be more liable to be frost bitten after this. Wright had no cold that he could see, at his first visit. . . Loftin testified . . [252]that he had four negroes . . who stayed at these shanties, and that two . . were frost bitten, . . that these shanties did not deserve the name."

Held: [255] " the lodging of the plaintiff's slaves in any of the shanties, . . was not the taking such care of them as a man of ordinary prudence would take of his own slaves . . much less, was it the taking good care of them and furnishing them with good accommodations." [Battle, J.]

Cates v. Whitfield, 8 Jones N. C. 266, December 1860. [267] " An action of detinue had been begun . . before the judgment . . Eliza, was delivered of . . Henry,"

Held: [268] " the issue must be regarded as incidents . . and . . must follow their principal."

Howell v. Troutman, 8 Jones N. C. 304, December 1860. Will of Jacob Troutman, a [306] "very illiterate" man: [304] "I . . bequeath to Ann Allmond [my white housekeeper] two hundred and fifty dollars, provided . . Ann shall live with my [childless] wife, . . All the ballance [*sic*] of my estate . . including my gold mine . . I . . bequeath to Lucy, the infant child of . . Ann . . and if . . Lucy should die without . . child, . . all . . shall be divided between" my nephews and nieces. [305] "Ann . . had lived in his house from 1849 to 1858, in the fall of which year he died. One of the subscribing witnesses testified that Lucy . . died ['about three years old'] during the life of . . Troutman; that, in his opinion, she was a mulatto; . . that . . Troutman told him that the child was his, . . and accounted for the color from a fright which Ann . . had received while *enciente*; . . [another] of the subscribing witnesses, swore that he had no doubt the child was a half-blood mulatto; that he judged from its color; . . that . . Troutman believed the child was his, said he knew it was, and that he intended to make a lady of it. Dr. J. P. Cunningham . . was called . . to visit the child . . found her in his arms; that he called her 'daddy's baby,' and that the child was unquestionably a negro. Dr. . . [306] Wilson . . testified that the child was in his opinion a mulatto, and that . . Troutman had once remarked . . that he loved the child . . as if it was his own, that Anne [*sic*] had . . picked it up somewhere."

Held: [308] "our law imposes no prohibition upon a man to prevent him from bestowing his property upon the object of his affection."

Alston v. Lea, 6 Jones Eq. 27, December 1860. Will: "for the purpose of paying . . debts, I wish negro fellow, Cudge, negro boy, Mack, and negro girl, Milly, to be sold,"

Brown v. Haynes, 6 Jones Eq. 49, December 1860. [52] "the commissioner has charged for Jesse's [1] services at one hundred and fifty dollars per annum for five years," beginning about 1851.

Biddle v. Carraway, 6 Jones Eq. 95, December 1860. Will, 1858: [96] "should my perishable property be insufficient to pay my debts, I wish the following negroes to be sold . . Rosetta [and five male slaves], . . and also, the children . . Rosetta may hereafter have;"

Riggs v. Swann, 6 Jones Eq. 118, December 1860. In 1850 "it was agreed . . [119] [to] convey . . Joe, . . absolutely, at the price of six hundred and fifty dollars, . . to have the use of Abram at . . $125 a year,"

Johnson v. Malcolm, 6 Jones Eq. 120, December 1860. [121] "1853 . . bought . . a negro woman slave and two small children, at $775,"

Mason v. Sadler, 6 Jones Eq. 148, December 1860. [149] "Clarisa [*sic*], was sold [before 1847] . . for the payment of debts, and Mrs. Mason [widow of the testator] became the purchaser at four hundred dollars; . . It took all that could be made by the hire of Charles and

[1] [50] "old Jesse, the tanner,"

Betsy Ann to support the family [poorly] . . As to Clarisa, she soon had a family of small children, and added to the expense of the family."

Scales v. Scales, 6 Jones Eq. 163, December 1860. Will: [164] "the negroes . . loaned to my wife, during her life, after her death, be sold,"

Collins v. Creecy, 8 Jones N. C. 333, June 1861. "no one was permitted to cut trees there save her own hands,"

Poole v. Railroad Co., 8 Jones N. C. 340, June 1861. "Guilford [the slave of the plaintiff] . . was a deaf mute, and was walking on the railroad track with his back to a . . train, . . approaching him. The engineer . . could have stopped the train when he first saw the slave, but . . took it for granted that he would hear . . and get out of the way; . . finding he did not . . he gave the signal to put on the brakes, . . and . . gave the alarm whistle . . the negro was struck [and killed]. . . [341] The engineer had no knowledge of the slave's deafness. Guilford was a blacksmith, and was worth $1000."

Held: the plaintiff cannot recover.

State v. Peter, Jess, and Miles (slaves), 8 Jones N. C. 346, June 1861. "The slaves . . were committed to the jail . . by justices of the peace, under a criminal charge, which was not bailable. . . remained . . until . . January, 1861, when a court of Oyer and Terminer was held . . the grand jury, . . after a careful examination, reported 'that they found nothing against them,' . . discharged at the expense of their owner, excluding the jail fees,"

Held: [347] "the judgment . . should have been for the costs including the jail-fees." [1]

State v. Lauglin (a slave), 8 Jones N. C. 354, June 1861. "The indictment charged that the defendant 'feloniously . . did set fire to . . a . . barn then having corn in the same.' The proof was that the prisoner maliciously . . did set fire to a stable . . and that a crib with corn and peas in it, . . was partially consumed, . . Verdict, 'guilty.' . . Sentence was pronounced,"

Judgment reversed, and a *venire de novo*: [2] [356] "a barn and a crib are houses of a different kind,"

Haden v. Railroad Co., 8 Jones N. C. 362, June 1861. "Action . . for negligence . . [363] The plaintiff hired to the defendant a healthy able bodied slave for . . 1858, . . to work as a section hand . . on Sunday . . had been permitted to go on a train to see his master. On the Wednesday morning he reported himself to the section-master, . . as too unwell to work, . . was directed to go to the shanties . . In the evening, the section-master . . found him sitting up. He complained of pain . . The master gave him a teaspoon full of laudanum, and put a mustard plaster to his head. On next morning, the slave was in bed, where he remained all day. He expressed an anxiety to go home, and . . next morning was permitted . . went on the train . . forty miles . . taking

[1] Rev. Code, ch. 87, sect. 6; *ibid.*, ch. 107, sect. 69.
[2] Same *v.* same, p. 248, *infra.*

. . a note from the section-master to the station agent . . directing him to send word to the owner . . to come for him. . . The station agent first saw the slave after his arrival, . . scarcely able to stand. He was coughing and spitting blood, . . The station agent had him assisted to a shanty, . . went to see him, and had some coffee made for him; . . About 11 o'clock . . sent a messenger to plaintiff's mother, . . about three miles off, . . About sunset, a servant came with a buggy and took the boy . . Doctor Shemwell was sent for early that night, . . case of fully developed typhoid fever, . . hardly a hope . . [364] Doctor Whitehead . . came . . thought the case well nigh hopeless, but he did all he could for him. . . The slave died that night. Doctor Payne testified that . . on Friday morning before he started . . a man of ordinary intelligence would not have been able to discover that he had typhoid fever, though a physician would. . . The jury found that the disease was materially aggravated, and the danger increased by the ride. They assessed damages to $800. . . Judgment for the plaintiff,"

Judgment reversed, and a *venire de novo*: no want of due care in sending him on the train, or [365] " in the cool of the afternoon, . . to the house of the plaintiff's mother, where he was sure to have the kindness and care of a woman's ministrations."

Yarborough v. Yarborough, 6 Jones Eq. 209, June 1861. " The plaintiff having a claim upon . . slaves, . . in the possession of Thomas E. Yarborough, . . went to . . Arkansas, and was about to bring them back to this State, which . . was disagreeable to the family of . . Thomas, and particularly to his wife, . . who was attached to the slaves " Therefore, others were substituted.

Norfleet v. Slade, 6 Jones Eq. 217, June 1861. The testator bequeathed to his aunt (to whom the Roanoke plantation was devised) " all my negroes on my Roanoke plantation [in Martin County]; also, all my negroes on my Edgecombe farms, which I got from Martin county,"

Held: [220] " The bequest embraces . . [221] the offspring of slaves removed from Martin to Edgecombe, but born in the latter county. While the testator is making provision to restore the slaves to their original places of residence, and to their family connexions, it would be an inconsistent and harsh construction to hold that he intended to separate infant children from their mothers." [Manly, J.]

Lynch v. Bitting, 6 Jones Eq. 238, June 1861. " The plaintiff and defendant had been partners in the business of buying and selling slaves from . . 1847 to 1855, during which time, large profits were realised . . amounting in the latter years . . to as much as twelve thousand dollars."

Gregory v. Richards, 8 Jones N. C. 412, August 1861. Action of slander. [411] " plaintiff . . said that he had got a negro . . to put up his horse, and that when it was brought out by the negro, this bridle [belonging to the defendant] was on it; . . [412] the defendant replied, ' you or the negro stole the bridle, and I don't know which is the worse, you or the negro.' . . [413] Verdict for the plaintiff for $900." Judgment thereon, affirmed.

Pritchard v. Oldham, 8 Jones N. C. 439, June 1862. [440] " the slave was . . cried off to one Jolly at . . $1282. . . Jolly and . . Hanks were partners in merchandising and trading generally, and now and then purchased a negro or two on speculation, sending the negroes out of the State for sale."

State v. Laughlin (a slave), 8 Jones N. C. 455, June 1862. See same *v.* same, p. 246, *supra.* [457] " upon the new trial, . . a special verdict was rendered, in which the building was . . minutely described, and it was submitted to the Court to decide whether it was a barn . . within the meaning of the statute." The court held [456] " that it is not clearly within the purview of the act. . . adjudged that the prisoner be released:" Affirmed.

Bennett v. Merritt, 6 Jones Eq. 263, June 1862. [265] " Dilsey was an unmanageable slave and had lately runaway, and that her mistress was displeased with her, and wished her sold." " took her to Richmond and sold her "

Gillis v. Harris, 6 Jones Eq. 267, June 1862. Will, dated 1842: [268] " that my daughter, Sarah Gillis, . . have three small negroes more," In 1845 the testator conveyed to her, by bill of sale, Lizzie and her three children. [267] " Lizzie . . had been accused, and taken before a magistrate for burning a tobacco barn, and the charge was compromised by the master's consenting to send the woman out of the State. She was first sent a short distance into Virginia, and then she and her three children were put into the hands of . . one of the children of Sarah [Gillis], with the bill of sale, and carried to . . Georgia, where the family resided." The testator died in 1847. [267] " the proofs go to fix . . actual execution [of the will] . . 1847,"

Held: [271] " the legacy was not adeemed by the gift,"

Clark v. Bell, 6 Jones Eq. 272, June 1862. Will of Elijah Bell: " after the death of my sister . . I direct . . that . . negro girl, Louisa, be set free." "An enquiry has been made under the direction of the Court below, . . the woman is unwilling to accept of freedom upon the condition of leaving the State. This enquiry has been conducted with such apparent care, that the Court is satisfied with the result. . . [273] The children of . . Louisa, were born after the death of the testator."

Held: " The election of the mother . . determines the *status* of her offspring. . . Her election . . made the bequest void from the beginning, . . they pass to the residuary legatee." [Manly, J.]

Bevis v. Landis, 6 Jones Eq. 312, June 1862. " purchased Anderson at private sale, . . 1857, . . $1,000."

In the matter of Huie, 1 Winston[1] 165, May 1863. " *Habeas Corpus.* . . Huie is twenty-nine years of age; . . since the death of his father, in 1857, the overseer of his mother, . . more than twenty negroes. . . no white person lives on the place except herself, and a daughter about 19

[1] " Vol. 1, Winston's Law Reports, (containing last no. of Jones and 1st Winston.)"

years of age. Huie . . lives . . adjoining; has a wife and two small children; no other white person on the place. . . his own negroes, (some thirteen or fourteen) . . [He] managed the negroes well; kept them in good order, and made good crops. . . afflicted with bronchitis, . . 11th October, 1862, reported at the Camp of Instruction . . 'excused until 1st day of May, 1863.' . . Huie's name was put on the roll at that date [October 11, 1862], and [he] returned home and remained there until his arrest."

Held: [168] "what is called an enrollment . . October, 1862, . . void . . the petitioner . . is entitled to exemption."[1] [Pearson, C. J.]

Bailey v. Moore, 1 Winston 86, June 1863. "Hinton, was then runaway, and he was cried off to a bidder, on the condition, that if the purchaser did not get him, he was to pay no money. The slave not coming in, this sale was . . rescinded . . Afterwards, . . 1854 [1855], Nelson [the owner] executed . . the following instrument: 'Received of . . Moore his negro man, Cager, in place of my boy, Hinton, to which I warrant the . . title . . but do not warrant the delivery of . . Hinton, as he is now in the woods or runaway; therefore, . . Moore takes . . Hinton as he runs.' . . Cager . . continued to work for [Nelson] . . until his death . . 1855. After this trade, Hinton was captured and went into Moore's possession."

Mordecai v. Boylan, 6 Jones Eq. 365, June 1863. William Boylan [366] "left a large estate . . situate in both" North Carolina and Mississippi. By his will, dated 1858, he gave his daughter land in Mississippi and [368] "many slaves," and provided for the emancipation of [367] "David Matthews, his wife, and daughter, Adelaide." The testator died after the passage of the act of 1860.[2]

Held: the act forbids such emancipation. "The act declares, that no slaves shall hereafter be emancipated by will, deed, or any other writing, which is not to take effect in the life-time of the owner. . . [368] we can see no reason why it may not operate upon a will made before its passage, where the testator dies afterwards, as well as one made subsequent to the time of the enactment. . . they shall go to the next of kin," [Battle, J.]

State v. Duckworth, 1 Winston 243, June 1864. Indictment:[3] "The jurors . . present that . . Duckworth . . being the owner of a . . slave, named Peggy, . . did permit . . [244] Peggy to keep house to herself as a free person," Peggy's owner, Smyth, "moved . . several years ago; that she was reputed since . . to be the property of the defendant; . . that . . Smyth . . conveyed the house and lot in which the slave lived, to the defendant, and gave him a note for fifty dollars in consideration that he would take the slave and her husband, both old negroes, and take care of them the rest of their lives; that for a year

[1] Exemption act of May 1, 1863, amending the exemption act of Congress (C. S.), of Oct. 11, 1862.

[2] Acts of 1860, 1st sess., ch. 37.

[3] Rev. Code, ch. 107, sect. 29.

or two . . the defendant did furnish them with wood, provisions, etc., but for several years past, he has done nothing for the woman, the man being dead, and she has had to support herself . . by begging and what little work she could do. And that the defendant has not of late exercised any control over her, . . The Court charged . . that . . the contract between Smyth and the defendant . . amounted to a sale, . . Verdict for the State and judgment accordingly." Affirmed.

State v. McDaniel, 1 Winston 249, June 1864. [250] "The jurors . . present that . . McDaniel, being a free negro, . . the dwelling house . . did break and enter with intent . . a white female . . [251] against her will to ravish" The prisoner [249] "went to the back door and broke it open, entered the house, struck her violently with a water bucket, . . A child of her sister . . struck at the prisoner . . As the child went off [for help], the prisoner got off . . and left the house. . . One witness testified that the prisoner was between sixteen and seventeen . . Another, that he was between eighteen and nineteen. . . [250] The counsel for the prisoner requested the Court to instruct the jury, that . . if he afterwards desisted on account of the resistance . . or through fear or any other cause, that the prisoner was not guilty. The court declined . . The counsel for the prisoner excepted. . . moved, in arrest of judgment, . . overruled and judgment entered according to the verdict." Affirmed.

State v. Black, 1 Winston 266, June 1864. "The defendant was indicted for an assault on . . his wife. . . lived separate . . [267] He accused her of connection with a negro man and she called him a hog thief,"

Johnson v. Murchison, 1 Winston 292, June 1864. [294] "three . . notes dated . . June, 1852, 1853, 1854, for $150 each . . to secure the payment of the hire of a negro man"

State v. Sam (a slave), 1 Winston 300, June 1864. "The jury found . . specially 'that the prisoner made an assault on ['a female child'] . . of the age of four years . . and that the prisoner was under 14 years of age; . . that there was an emission' . . The Court gave judgment for the prisoner,"

Judgment affirmed: [301] "The presumption . . that the person under 14 cannot commit an assault with intent to commit a rape . . [302] [is] irrebuttable. . . A large portion of our population is of races from more Southern latitudes than that from which our common law comes. We have indeed an element of great importance from the torrid zone of Africa. . . climate, food, clothing and the like, have a great influence in hastening physical development. Whether it may not be advisable to move down to an earlier age than 14, the period of puberty, for a portion, if not for all the elements of our population, may be a proper inquiry for the Statesman." [Manly, J.]

State v. Norton, 1 Winston 303, June 1864. "an indictment for murder, . . The Solicitor for the State proposed to examine . . a witness, but it was objected by the prisoner, that he was of negro blood within the prohibited degree, which being proved, the Solicitor replied that the

prisoner was also of negro blood, . . a witness . . knew the father and grandmother . . and they were reputed to be of negro blood; that the grandmother . . was very dark, . . he should suppose . . at least one-fourth of negro blood; that he . . was not an expert . . Mrs. Huckaby testified that she knew the grandmother, . . that she was reputed to be a mulatto, was very dark . . [304] Two witnesses . . knew the father of the prisoner; that he was reputed to be a white man and was allowed to vote; the mother of the prisoner was a white woman from Scotland. . . the Court held that the witness was competent. . . The jury found the prisoner guilty."

Judgment thereon reversed and a *venire de novo*: [305] "when . . a collateral question arises, . . and . . the testimony is not clear, . . and there is conflicting testimony . . it is necessary for the Judge to state his conclusions as to the facts." He has not done so.

Patton v. Patton, Winst. Eq. 20, June 1864. Will, 1861: [21] "if . . my executors should think it necessary to sell one or more of the slaves directed to be sold, even before said rail road contracts ['in Tennessee and North Carolina'] are completed, for bad conduct or other cause, they are at liberty to do so."

Conly v. Kincade, Winst. Eq. 44, June 1864. Will, 1836: "to his wife a negro girl . . Adeline, . . and at her death, Adeline and her offspring together with Alfred and the plantation . . to be sold for the most that can be got for them at public sale"

White v. Mallett, 2 Winston 34, December 1864. "that the petitioner was the owner and manager of more than 15 able-bodied slaves, and that he had all the other qualifications required by the act of Congress of 17th Feb., 1864. . . that on the 20th April, 1864, the petitioner had applied for a detail as a farmer working ten hands, and that his application had not been acted on by the Department of War, when he was ordered to camp in November." "The writ of *habeas corpus* was applied for . . and issued the 22d November, 1864."

Held: [34] "Assuming that the petitioner was . . entitled to exemption as the owner or manager of fifteen hands, . . he is too late in now making an application on that ground." [Pearson, C. J.]

Casey v. Robards, 2 Winston 38, December 1864. "James Casey . . presented his petition to Reade, J., . . 17th . . Sept., 1864, setting forth that he was a free negro, and that in . . 1859, for a valuable consideration, he conveyed by deed his services for ninety-nine years, to . . Love, . . that . . 10th of Sept., 1864, he was taken by Lieutenant L. S. Robards, the enrolling officer . . into his custody as a conscript free negro,[1] . . The prayer was for a writ of *habeas corpus*; the writ issued, . . return admitted the facts . . [39] judgment rendered against the petitioner,"

Affirmed: I. [40] "the deed for service . . does not alter the social or political condition of the negro. . . [II.] [43] the law is constitu-

[1] Act of Congress (C. S.) of Feb. 17, 1864, ch. 79, sect. 1.

tional [even considering it the case of a white man] . . and eminently proper. . . When it became necessary . . to conscribe or impress negroes for military duty, it was a requirement of social order that they should be brought in in such a way as not to violate the distinctions of race. It would not have been proper, and according to usage, to mix them with the whites in such way as to compel social equality. . . [44] little room in an army for the enjoyment of civil rights." [Manly, J.]

State v. Dick (a slave), 2 Winston 45, December 1864. "The prisoner was indicted for arson in burning a barn with grain in it. . . Edson testified that the confessions were made after Kerr had represented to the prisoner, that it would be for his advantage to confess . . the Court . . adjudged that they were freely made . . and then remarked . . that after the other evidence . . the solicitor, might withdraw this, if he chose . . The solicitor declined . . [46] The jury found the prisoner guilty, and from the judgment, according to the verdict, the prisoner appealed." *Venire de novo* awarded.

State v. Honeycutt, 2 Winston 51, December 1864. "the slave, in the night time, carried a bag of corn near to the defendant's house, and threw two stones on the roof of the house, and the defendant came out . . and received the corn. The master . . suspecting . . followed the slave, and was near . . and saw . . When the corn was delivered to the defendant, he handed something to the slave, but the witness did not know what. The defendant did not know of the master's presence." Verdict of guilty.[1] Judgment thereon, affirmed.

State v. Brown, 2 Winston 54, December 1864. "an indictment . . for permitting his slave to go at large as a free person, and for permitting him to keep house . . exercising his own discretion in the employment of his time.[2] . . that the defendant was the owner of the slave, . . 65 or 70 years old: that she lived on a lot in . . Charlotte, two hundred yards from where the defendant lived, who was frequently on the lot . . having a tan yard on the lot, . . that she kept a boarding house for soldiers and other white persons, and was frequently seen in the market and in the stores, buying supplies . . that when the defendant was remonstrated with, by a policeman . . he said that she was old and unable to work, and was of little value to him while he had her, and that he permitted her to work her own way. . . [55] The jury found the defendant guilty," Judgment thereon, affirmed.

State v. Ellick (a slave), 2 Winston 56, December 1864. Indictment for murder. [64] "The prisoner and Micajah [another slave], in a starlight night . . had a fight. Micajah got the prisoner down, and then ran off. The prisoner . . had his hand to his side, as if . . holding something . . set down on the door sill, on which the deceased [another slave] was sitting. Words passed . . the prisoner got up—the deceased then rose up and reached his hand inside the door and got a stick. As

[1] Rev. Code, ch. 34, sect. 85.
[2] *Ibid.*, ch. 107, sect. 29.

he was turning round . . the prisoner stabbed him . . with a bowie knife, . . The deceased then knocked him down with the stick; . . a second and third time; prisoner ran off, the deceased followed him a few steps, and fell, and died of the wound." Verdict, guilty. Judgment thereon, affirmed.

State v. Jake, 2 Winston 80, December 1864. "an indictment for burglary, . . that the smoke house had been broken and entered in the night by the prisoner, and that some bacon had been stolen" [82] "The [tobacco] factory and the smoke house had a common inclosure, from which the log dwelling was excluded." Verdict, guilty.

Judgment thereon, reversed: [83] "The smoke house was doubtless used for the purpose of storing meat and other things for the use of all persons, white and black, who were engaged in the tobacco factory. . . the proprietors . . placed it . . [where] it would not enjoy that protection which the law affords against a burglarious entry." [Battle, J.]

Harris v. Hearne, 2 Winston 92, December 1864. Will: to his "daughter, . . four slaves, . . if [she] . . shall die childless, . . it is my desire that my . . son . . shall remove back to this country [from Tennessee], and to have them, but not to take them to any other part of the country."

Miller v. London, Winst. Eq. 81, December 1864. Will of Dr. Frederick J. Hill, who died in 1861: "I . . direct that my executrix . . purchase . . one hundred acres . . to be paid for out of my estate. And I . . devise . . said one hundred acres to my [four] worthy friends, . . I also give . . unto my said friends, . . my faithful and trusty servant, Charles, and his wife, Louisa, and his son, Jim; and . . direct that my executrix . . pay over to my said friends . . five hundred dollars, to be laid out . . in stocking said farm . . and that Charles and . . Louisa, and . . Jim, live on said farm and cultivate it."

Held: [83] "The bequest . . was manifestly for their *quasi* emancipation, without being carried from the State, and is, therefore, void . . [84] The act of 1860, ch. 39, which prohibits the emancipation of slaves by will, need not be invoked . . as the result will be the same without it." [Battle, J.]

Wilson v. Stafford, Winst. Eq. 103, December 1864. Will, 1862: "that . . my negroes . . either be hired out or worked on the plantations as thought best; but if either of them should become insolent, or unmanageable, then to be sold"

Ferrell v. Boykin, Phil. N. C. 9, June 1866. "at November Term, 1857, the County Court of Nash county bound a base-born free negro child as an apprentice to the plaintiff. The child had been born in Nash county, . . and had lived there . . until December, 1856, when he removed with his mother to the county of Wilson . . In June, 1857, soon after his mother's death, the child had been bound by his mother's husband, . . his reputed father, to . . Boykin."

Held: [10] "His residence in Wilson county, being for less than a year, . . his original settlement remained. . . it is the duty of the court

to bind out all free base-born colored children, whether they are paupers or not! At least such was the law at the time of this transaction." [Reade, J.]

State v. Thomas Brodnax (a freedman), Phil. N. C. 41, June 1866. Special verdict: "the prisoner . . in January, 1865, was the property of Dr. E. T. Brodnax, . . and the deceased was the overseer . . that late in the evening of the 2d day of January, after the day's work was done, and the negroes had returned to their houses, the prisoner, his sister, a grown woman, and some small children . . began to dance and sing," "in the plat of ground . . between the negro-houses and the overseer's house . . about thirty feet [away]; . . and made a considerable noise; that the deceased . . ordered them to cease . . all immediately ceased, except the prisoner, . . [42] that the deceased then said . . 'Tom, you are no better than the young ones, and you must stop your noise too;' that the prisoner replied, 'You will not let me go to master's house to play, and will not let me play here, and I don't know where to play;' that the deceased said . . 'If you say that again, I will mash your mouth;' that the prisoner repeated these words, and was . . dancing . . going backwards towards the negro-houses; that the deceased walked towards him with a stick in his hand, and struck him twice upon the head . . that the prisoner wrenched the stick out of the hand . . struck him one blow . . and fled; that the deceased . . died within a few minutes, his skull being fractured . . that the deceased was an elderly man, and the prisoner a man just grown, . . used his utmost strength; that the ['heavy hickory'] stick . . was about three inches thick at the larger end, . . and three feet in length; . . a deadly weapon, . . His Honor, considering that the facts . . constituted a case of manslaughter, gave judgment accordingly."

No error: [44] "the prisoner must be held accountable according to the principles applicable to his status, when the alleged crime was committed, . . [46] we . . have come to a conclusion with no little hesitation. The conclusion is, that the prisoner acted under a well grounded fear that his life was about to be taken, . . In support of this judgment, . . the case of State *v.* Will[1] . . is a full and direct authority." [Battle, J.]

State v. Lawson (a freedman), Phil. N. C. 47, June 1866. "Lawson, then a slave, and George, a free man of color, were indicted . . 1864 . . for a burglary, . . the second day after . . several persons came together at the house of the prosecutor, to aid him in detecting the perpetrators . . Information indicated George and Lawson . . [48] George was brought first and tied . . and soon afterwards Lawson . . They found [him] at work, and he denied all knowledge . . and denounced . . any one that would rob such a man as old Mr. Petre. He walked with the party to the house . . [was not tied] and was not more than fifteen yards distant from where George was confined," "The party endeavored by threats and severe whipping, to extort from George a discovery of the

[1] P. 70, *supra*.

stolen property. During a pause . . Lawson said: If you will not whip me, . . I will show you the property. . . Nether [*sic*] threats nor promises had been made to him. . . at a distance of about four hundred yards . . he showed them the stolen property, . . stated voluntarily, that he and George had broken open the window . . that George kept nothing but one bale of cotton-yarn, and he, Lawson, undertook to conceal the remainder . . until he could sell it for their joint benefit. The evidence of the remarks . . was admitted" [47] "The prisoner was convicted, and . . judgment was pronounced"

Error; *venire de novo*: [49] "Everything that the prisoner said and did, after he had witnessed the torture inflicted upon George, was 'with the fear of the lash before his eyes.'! The party had assembled . . to find out the truth by means of the lash, forgetful of the rule,—'The end does not justify the means.'" [Pearson, C. J.]

Bunting v. Harris, Phil. Eq. 11, June 1866. "the widow sold [some of the slaves] to pay . . debts" of the testator, who died in 1847.

Beard v. Hudson, Phil. N. C. 180, January 1867. "The [colored] apprentice was shown to have been bound to the master . . 1859; in May, 1865, he had run away, and was then living in an idle and disreputable manner, with his mother."

Held: the county court has the power to order the sheriff to "commit the apprentice to the custody of his master."

Woodfin v. Sluder, Phil. N. C. 200, January 1867. "The bond . . was for $2,000, dated 2d January, 1865, with condition reciting the hire of two slaves until the 25th of December, 1865, for . . 'two hundred dollars,' . . the slaves remained in the service of the defendant until the Federal troops reached Ashville, about the 25th day of April, 1865, when they went off with, or under the influence of those troops;" [202] "it was proclaimed at the hiring . . that such money would be taken as would pay the debts of the estate; . . special reference . . to a debt due the bank, which could be paid in its own notes, . . worth twenty-five cents in the dollar."

Held: "The emancipation of slaves during the year was their artificial death as slaves, . . the defendant is liable for the hire during the whole of the year. . . [204] the true value of the contract was . . $50 in coin." [Reade, J.]

State v. Tisdale, Phil. N. C. 220, January 1867. "Indictment ['found . . 1863'] . . charging the defendant with unlawfully trading with a slave, larceny, and receiving stolen goods, knowing they were stolen, . . [221] a set of buggy harness. . . verdict of 'Guilty' upon the first and third counts, . . Judgment,"

Affirmed: [222] "The former of these two is bad, because the article . . is not one of those the trading for which was prohibited[1] . . the judgment is such an one as the court had a right to render on the latter count,"

[1] Rev. Code, ch. 84, sect. 85.

State v. Penland, Phil. N. C. 222, January 1867. "The prisoner, a person of color, was indicted with two others for the murder of 'one John Wilson, a person of color,' . . [223] committed in March, 1865, . . the deceased was the slave of . . Edney, who had purchased him of . . Wilson. . . Verdict of guilty . . judgment of death,"

Error; *venire de novo*: [224] "the fact that the deceased was a slave is not set out in the indictment, . . the prisoner is entitled to the tenderness of the law in favor of life," [Pearson, C. J.]

Rogers v. Hinton, Phil. Eq. 101, January 1867. Will, 1859, "directed a [female] negro, named 'Happy,' to be sold, and the money . . 'to be applied to the payment of my debts and funeral expenses, my debts being very small, . . [102] and out of the surplus'—she gave some legacies."

Colson v. Martin, Phil. Eq. 125, January 1867. "The widow . . had allowed the defendants . . to take with them to Texas two of the slaves,"

Falls v. McCulloch, Phil. Eq. 140, January 1867. "Bill . . praying for . . a construction of . . a will, filed . . 1865; . . 'The negroes to be sold at my wife's death'"

Peter Chambers v. Davis, Phil. Eq. 152, January 1867. Will of Maxwell Chambers, who died in 1855: "I feel desirous to make ample provision for my poor old friendless woman Lucy, as well as my old man Peter; therefore rely on the humanity and tender feelings of my executors to have them well taken care of, and kindly treated, during the short time they will probably want it. I leave in the hands of my executors the annual interest as it becomes due on $1,500 of my . . bonds, or so much of it as may be necessary, . . to support them during their lives, the surplus, if any, including the principal . . to go to the trustees of Davidson College," "Bill . . filed to Fall Term, 1866," The complainant is Peter, the former slave.

Held: [153] "the clause . . [is] imperative, and that the plaintiff is entitled to whatever sum may be found necessary as an annual support during life." [Battle, J.]

Haley v. Haley, Phil. Eq. 180, January 1867. Will of Holiday Haley, dated 1857: [181] "My will . . is to set free the following slaves, . . and to [them] . . I hereby give . . freedom forever. . . I give . . to the . . liberated slaves half of the tract . . I now live on, to them and to their heirs forever, including the buildings. . . [and] the sum of seven hundred dollars annually for ten years," The testator died in June 1864.

Pearson, C. J.: [I.] [183] "If allowed to make a guess I should say this old man never heard of the act of 1861.[1] But . . take for granted . . notice of it. . . also . . that he had notice of President Lincoln's Proclamation of the 1st of January, 1863, and of the fact that the condition of slavery had become an issue in the war [[186] 'tendered and

[1] Acts of 1860, 1st sess., ch. 37.

accepted']; so that if the United States succeeded in suppressing the rebellion every one expected the slaves to be liberated. . . died, leaving his will unaltered . . as if he had said . . 'should these slaves be liberated by the result of the war, or in any other manner, . . I do . . make provision for their support.' . . [184] emancipation was the substance, and the manner of it . . not . . [II.] [185] at the . . death of the testator, . . the State government was wrongful, and formed a part of the government of the Confederate States. The legacies . . were against the policy of the Confederate States, and of the wrongful State government, but was [*sic*] in accordance with the policy of the . . United States and of the rightful government of the State . . then suspended by usurpation, . . the whole condition of things is now changed. . . the courts, which make a part of this rightful government, cannot refuse to give effect to legacies which are not opposed to the policy of the United States or to its policy as a part thereof, . . [III.] [186] whether . . [emancipation] was by the proclamation . . 1863, or by the surrender and general military order of May, 1865 and the action of the owners . . in accordance therewith, or to [*sic*] the ordinance of 1865, is immaterial," Reade, J., concurred; Battle, J., dissented. [191] "Decree for the complainants."

Wood v. Sawyer, Phil. N. C. 251, June 1867. Will of James C. Johnston, dated April 1863: [255] "that my negroes may be taken care of, and that my Real and Personal Estate may not be divided and scattered to the four winds of Heaven, and, perhaps, brought under the hammer of the auctioneer or sheriff for a division, I have placed them in the hands of . . [256] men of . . honor . . energy to carry out my wishes . . contained in my private letters to them." The letters were dated April 1863, [257] "making dispositions as regards favorite slaves," [278] "The estate . . was one of the largest in the State." Will upheld.

Banks v. Shannonhouse, Phil. N. C. 284, June 1867. [285] "a large part of [the advancement] . . consisted of slaves, the title to which the deceased had warranted to her forever, . . these had been taken from her by the act of the government, (emancipation,)"

Held: [287] "The slaves constituted an advancement as of their value at the time they went into the possession of Mrs. Shannonhouse, and their 'political death' afterwards is the same in legal effect as if they had died a natural death." [Pearson, C. J.]

State v. Taylor, Phil. N. C. 508, January 1868. [509] "Lydia Taylor was offered as a witness for the State. . . some eight or ten years before, she and the prisoner . . while slaves, had lived together as husband and wife. John Taylor was then sold, and did not again live with Lydia until December 1865, when he took her to his home . . She requested him to marry her, but he refused"

Held: [512] "She was in law nothing more than his concubine, and . . a competent witness against him."

March v. Phelps, Phil. N. C. 560, January 1868. "in February 1860 the plaintiffs ['negro-traders'] bought a slave from the defendant, and

took a bill of sale . . Received . . two thousand dollars for a negro boy named Allen, twenty-six years old, . . warranted sound in mind and in body and the title is good: . . [561] He was in fact 34 or 35 years old . . The plaintiffs . . lived near the defendant, . . and had as good an opportunity to know the age . . as the defendant had. The plaintiff Hampton . . had for five or six years prior . . been sheriff"

Held: [562] "that instrument does *not* contain a warranty as to the age"

Chandler v. Holland, Phil. N. C. 598, January 1868. "Trover for forty-one bushels of corn, . . the plaintiff . . in 1864 . . had hired to . . Jenkins a female slave for the year 1865, and was to receive . . one fourth part of the corn made by Jenkins. The woman remained . . up to the time of getting the crop in the Fall of 1865. At that time the plaintiff claimed the corn . . not only because of the contract, but because during 1865 he had supported two children of the woman . . too young to support themselves. There was also evidence . . that Jenkins measured out one-fourth . . and placed it in a crib on the premises, and delivered it to the plaintiff, and that the defendants hauled off about one half . . Evidence for the defendants . . that they had bought the corn of the negro woman, who claimed that she . . was entitled to it; also that Jenkins did not deliver the corn to the plaintiff, but placed it in the crib that he and the woman might settle . . [599] between themselves. Two military orders were also offered,"

Held: [600] "she had no claim upon that one-fourth part . . allotted to the plaintiff."

Whedbee v. Shannonhouse, Phil. Eq. 283, January 1868. James P. Whedbee's will, proved 1853: [284] "his wife . . should have the use of all his estate during her natural life or widowhood, . . at her marriage or death . . 'one-seventh to be expended together with the several funds that may be raised by my wife as directed . . in items fourth and fifth, in fitting out and removing and settling all of my negroes except Demas, Jonah and old man Jack (whom I shall provide for hereafter) to Liberia or some other free foreign colony, as it is my wish that they shall be liberated and sent there. . . And should any of the bequest be left after fitting out . . with all necessary clothing and implements of husbandry . . and expenses of removing . . the balance . . to be divided among them having due regard to merit, old age and infirmity, . . when they reach their place of destination, and . . if any of them (which it is reasonable to suppose) should not be capable of receiving and managing their fund in a . . [285] safe manner, . . to appoint them a guardian who will be certain to do them justice. And I especially desire the American Colonization Society to have an eye to this bequest so that my negroes may in no wise be defrauded' . . a codicil, revoking a legacy of one . . seventh . . to James Shannonhouse, and adding it to the share . . given to the negroes. . . that the testator died without children, and that his widow dissented . . married again and had her share . . (including slaves) allotted to her; that . . executor . . sold those parts of the estate . . designated . . for sale (amounting to $98,000); that

the breaking out of the late war had interrupted his plans for sending away the slaves that had been liberated, and that the results of that war, together with the death, disappearance, etc., of the slaves had greatly embarrassed him . . that the residuary legatees claimed that as no removal . . was necessary now, they were entitled to the money"

Held: [I.] [287] "One of the results of the war was to effect the emancipation . . without the cost of transportation to . . free countries, . . this collateral advantage caused by what, as between these parties, was a mere accident, should be a 'wind fall,' or piece of good luck to the freedmen; . . nothing . . to show that the application of a part of the fund to . . [288] transportation was to be of 'the essence of the gift,' . . at the time, . . no other mode of emancipation except by removal . . no ground for an implication that the testator desired [removal] . . as a general rule, testators have submitted to this requirement unwillingly, . . [289] it is an absolute bequest . . [II.] [290] It is [contended] . . that in regard to that portion of the fund which would have fallen to those . . slaves . . who were assigned to [the widow] . . the legacy fails, . . a complete answer . . is, that the legacy is given to the slaves *as a class*, . . entitled to the whole fund. . . as between the freedmen. The pleadings do not raise any matter of controversy . . and we are relieved from the necessity of deciding, . . [291] but it may not be amiss to say, it is a settled principle in equity that where two or more are liable to a common burden, and the whole falls upon one, he is entitled to contribution from the others;" [Pearson, C. J.]

Gully v. Holloway, 63 N. C. 84, June 1868. [85] "the personalty belonging to the estate, in consequence of the emancipation of the slaves was insufficient to pay the debts,"

Tayloe v. Johnson, 63 N. C. 381, June 1868. Will of Lee, who died in the early part of 1861: "I desire that my plantation called Green Pond shall be kept up by my executors, retaining my slaves there, and to carry on . . [382] my farm just as if I were living, to hire out my surplus negroes, or to purchase other lands to work them on, to sell such refractory and disobedient negroes as they may deem most advantageous for my estate, and purchase others in their place if necessary," [384] "The . . estate was a large one, and consisted of about one-fourth real, and three-fourths personal property; the greater portion of the personal property being slaves."

Jacobs v. Smallwood, 63 N. C. 112, January 1869. [124] "In 1866 the ordinance of emancipation took away from liability to the execution of creditors the whole slave property of their debtors, amounting probably to more than half the value of the whole property of the State." [Rodman, J.]

Buie v. Henry Parker, 63 N. C. 131, January 1869. [132] "Complaint for the recovery of a mule, . . the defendant, formerly the slave of . . McEachin . . was in 1857 . . given by verbal gift to his daughter, the wife of the plaintiff, . . the day before Sherman entered Fayetteville (13th of March 1865) the plaintiff, who had aided the Confederate

cause, as he was leaving home for safety told his slaves that they could go to 'the Yankees,' or stay at home, as they pleased. The defendant stayed . . for some months, as formerly, but during the latter part of this year [1865] he was put upon wages, and continued as a hired servant for a year or so; the mule in dispute was one of Sherman's abandoned stock, and was picked up by the defendant . . 15th of March, 1865, and was by him, on the plaintiff's return home turned into plaintiff's horse lot, he telling the plaintiff's wife, who expressed a wish for the mule, that he desired to retain it to make a crop with. The mule was worked in the plaintiff's wagon, part of the time by Henry himself, and was fed and kept with plaintiff's stock. Both parties claimed it. The plaintiff offered to pay . . for taking it up, but the defendant declined . . During the latter part of 1865 the defendant spoke of placing the mule with another person for its feed, but the plaintiff declined to let it go; in July 1868 the defendant got possession . . by the intervention of the Military. The plaintiff recovered possession, by means of the process in this action, . . October 1868. The value of the mule is $150.00, and it would hire for 50 cents per day. . . [133] judgment . . in favor of the defendant,"

Affirmed: [I.] [134] "the donee [Buie] is the owner, subject to the right of the donor [McEachin] to treat the gift as a nullity, . . [II.] [135] On the 13th of March, . . the defendant, as a [deserted] slave[1] . . came under the control of the government of the United States. . . We prefer to adjudge that his status as slave or freeman was conditional, and dependent upon the result of the war. . . [136] the possession [of the mule] . . was held in common; both parties reserving their rights, and leaving the result to depend upon future contingencies—that is, if the Confederate States was successful, both the defendant and the mule would be the property of the plaintiff—if the United States prevailed, the defendant was a freeman, and the mule was his property. . . On the part of the plaintiff it was insisted, that the act of Congress is unconstitutional. For that the government of the United States has no power to interfere with the domestic concerns of a State in the Union. The reply is: The State of North Carolina was then in rebellion. . . [137] A State in rebellion surely can not claim to be exempted from the law of nations applicable to a foreign power waging war." [Pearson, C. J.]

Kane v. McCarthy, 63 N. C. 299, January 1869. The act of Congress of 1802, section 1, provides that "Any alien, being a free white person, may . . become a citizen of the United States," on certain conditions. The act of Congress, February 10, 1855, provides that "Any woman who might lawfully be naturalised under the existing laws, married . . to a citizen of the United States, shall be deemed . . a citizen." Pearson, C. J.: [303] "the history of parties in 1855 fully explains why this equivalent expression was adopted instead of 'free *white* woman,' for at that time an angry contest was going on in reference to the words 'all men are born free and equal,' and a formidable party took the ground

[1] Act of Congress of July 17, 1862, ch. 195, sect. 9.

that the act of 1802 was in violation of the Declaration of Independence, . . If the words 'free white,' had been left out, the bill would have met with opposition from the South, and if these words had been expressed it would have met with opposition at the North, so the reason for adopting an expression, which leaves that question open, is obvious."

Capehart v. Etheridge, 63 N. C. 353, January 1869. "the complainant [a creditor] attended the sale [in 1861] . . and purchased [two] slaves to the amount in value of about $4,000,"

Lattimore v. Dickson, 63 N. C. 356, January 1869. "The bill alleged that the plaintiff was formerly the slave of one Lattimore, who had permitted him to make money for himself, under which license he had accumulated about seven hundred dollars, in good notes, which for better security, under the law, he had taken payable to one Nolin, a White man; that Lattimore having died, the defendant had persuaded him to have the notes made payable to *him*, promising to act as his friend, and telling the plaintiff further that he intended to purchase him; that the plaintiff, relying upon his assurances, had the notes transferred as requested, and that during the same year the defendant purchased him; that in 1862 the defendant sold him to one Bedford; that since his Emancipation he has made demands upon the defendant for the notes or their proceeds, and the latter refuses to account for them, or pay him any part thereof; and that the defendant has collected all or a large part of such notes, partly since the Proclamation of President Lincoln, Emancipating slaves, and partly since the Emancipation of slaves by the ordinance of 1865. The prayer was for discovery and an account, and for other relief."

Held: [359] "We are clearly of the opinion, that all the choses in action, which the defendant had received for and on account of the plaintiff, at any time, even when he was a slave, and which he held in hand at and after the time when the plaintiff was emancipated, were held in trust for the plaintiff. And for this the plaintiff is entitled to a discovery, and an account." [Reade, J.] See Lattimore *v.* Dixon, p. 265, *infra.*

Lassiter v. Wood, 63 N. C. 360, January 1869. [363] "By reason of the emancipation of the slaves, the estate other than the lands devised to his sons, is insufficient to pay the pecuniary legacies of $10,000 each to his four daughters,"

Mitchener v. Atkinson, 63 N. C. 585, January 1869. "Mitchener had died . . in 1860, leaving an estate of some $80,000 in land, slaves [[588] 'upwards of one hundred'] and other property. . . cultivated two farms: . . at the former were employed five horses and fourteen good hands, at the latter ten horses and twenty good hands; the slave women and children being divided between the two places in the like proportion." Will: [587] "that my estate in all respects be continued as if I were still living, until my . . children arrive at . . twenty-one . . or marry, . . my intention being not to have my negroes scattered or hired," "By the results of the war the personalty had been so reduced in value, that . . [a] legacy of $20,000 [to his wife] could not be paid unless the land were liable therefor."

Harrell v. Watson, 63 N. C. 454, June 1869. In September 1864 "Watson purchased [at an administrator's sale in Hertford County, [459] 'which was not within the lines . . of the army of the United States,'] a negro boy under 21 . . for . . $2,000," "The terms of sale were, that purchasers might pay in Confederate currency, to the amount of $1,000; and, for any sums in excess . . in notes of the banks of this State, . . The value of bank notes, in gold, was . . 25 per cent., or, as one to four." Watson "having paid one-half [of the price of the slave] . . gave bond [to Harrell] for the other half." Action of debt, tried 1869. [455] "verdict [for the plaintiff] and judgment for $250 *in gold*, with damages for detention, etc."

Affirmed: [458] "we do not admit . . that by force of the proclamation of the President, all slaves are set free . . January 1st, 1863. . . [459] the proclamation is, by its terms, confined to slaves personally, and in its practical effect it was limited to such slaves individually as should come under the control of the armies of the United States.[1] . . the military Order of Gen. Schofield, after the Surrender, simply had the effect of announcing, that the whole State was then under the control of the army of the United States, and that by force of the act of 1862, and the proclamation of the President, and the order of Gen. Schofield, . . all . . slaves in . . North Carolina were free . . But . . a military order could not have [the] effect of abolishing . . slavery. That . . could only be done by the *government* of the United States, or by an ordinance of a convention of the people of the State. . . [460] So far as good morals are involved, the matter is not to be viewed, as we conceive, from a standpoint, where the institution of slavery is deemed wicked . . but from a standpoint where the institution was considered as established and made lawful by the laws of the State, and recognized and protected by the Constitution of the United States, and had been handed down . . from father to son among our people, from the first settlement of the colony of Carolina." [Pearson, C. J.]

State v. McNeill, 63 N. C. 508, June 1869. [509] "that the slave was sold [by a commissioner] . . 1854, . . on a credit of six months, and that [the purchaser] . . gave his bond for $1,026,"

Robinson v. McIver, 63 N. C. 645, June 1869. Will of Henry W. Harrington, "published . . December 1860 . . [646] testator died . . 1868, . . Section 20 gave to . . Covington a slave named Alexander Hambleton, his wife and family, in trust to be removed to Mexico where they might be free, but if on account of the disturbed condition of that country, or for other reason that could not be done, then to Ohio; but if that should be impracticable, then to St. Domingo. . . $1,000 was given to said Alexander, upon his arrival and settlement in either of those places; and $500 to Mr. Covington, in trust for payment of expenses attendant upon the removal, with balance after such payment to said Alexander," [650] "residuary clause sets out a specific legacy of many slaves, with particular instructions in regard to them."

[1] Act of Congress of July 17, 1862.

Held: "The pecuniary legacy to Alexander of $1000, and of $500 to pay expenses of removal are now absolute; the condition and purposes being met by emancipation;" [Pearson, C. J.]

West v. Hall, 64 N. C. 43, January 1870. "the bill of sale [1859] . . contained a warranty that the slave was such *for life*."

Held: "no breach of the warranty. . . the contract could not, in any way be affected by . . [44] the abolition of the institution of slavery."

Maxwell v. Hipp, 64 N. C. 98, January 1870. [99] "a bond . . for $1010, . . dated January 2d 1865. . . for the hire of a negro man . . for the year 1865, and that his hire was worth $50. His Honor excluded the testimony. Verdict for $7 70, of which $6 21 is principal money, . . Judgment,"

Venire de novo: "there is a legal presumption that it was solvable in Confederate money. . . The legislative scale does not apply to this contract, as the consideration was not Confederate money:"

Finger v. Finger, 64 N. C. 183, January 1870. [186] "As to holding the administrator liable for the value of the slaves, because he did not sell them in 1863; we think it would be unreasonable: of course they could only have have been sold for Confederate money," [Rodman, J.]

July Todd v. Trott, 64 N. C. 280, January 1870. "Thomas Todd, died in . . 1869, leaving a will, published . . 1858, . . [281] 'It is my will . . that all my slaves be emancipated . . but knowing that this cannot be accomplished without their removal from this State, . . I hereby expressly direct my executors, that as soon after my death as it can conveniently be done, they cause all my negroes, to-wit: July etc. (naming seven), to be removed and settled in some free State or States etc.; . . bequeath to [my executors] . . eight hundred dollars,'" [283] "'to be . . applied in discharge of their expenses in the removal of my said slaves to a free State or States, or to Liberia, . . any balance . . after paying the expenses . . to my said slaves, to be equally divided among them.' . . Bob and Parker died unmarried and without issue, in the life time of the testator."

Held: [282] "It is immaterial how they obtained freedom." They are entitled to five sevenths of the $800.

Allison v. Railroad Co., 64 N. C. 382, January 1870. [383] "action . . brought in 1860, to recover damages for the loss of a slave . . in 1859, under a contract of hire as a section-hand. . . he was directed to sleep with other slaves of the Company and the contractor, in a house having *bunks* . . A day or two before . . owing to . . a sudden rain, a servant of the contractor had ordered a keg nearly full of powder, and open, to be put . . under a bunk. . . [The slave] was seen in the house, with a torch, looking for his hat. . . explosion . . and he was killed."

Held: [384] "To put a number of slaves into a room to cook, eat and sleep, with an open keg of powder under their . . bunk, unknown to them, is negligence," [Reade, J.]

Biggs v. Harris, 64 N. C. 413, June 1870. "two bonds executed July 27, 1860, for $75,00 each, payable . . 1st January, 1861, and 1st Janu-

ary, 1862, . . ' for the hire of a boy.' . . free colored and nineteen years of age . . May Term, 1860, . . bound as an apprentice during his minority,"

Held: [415] " a master of an apprentice cannot transfer his *mastership* to another."

Fike v. Green, 64 N. C. 665, June 1870. [667] " Green was amply solvent until his slaves were emancipated."

State v. Hanner, 64 N. C. 668, June 1870. " the testator, died . . November 1863," [671] " The executor could not have sold slaves in 1864, except for Confederate money, and that would have been worthless. He did well to keep the slaves, and their emancipation was an accident, for which he is not responsible: " [Reade, J.]

Brown v. Foust, 64 N. C. 672, June 1870. " bond . . executed Sept. 1, 1863, payable in six months, for $1400, . . price of a negro girl . . $800, paid April 30th 1864, . . $400, paid Oct. 29th 1864."

Held: " The jury . . should have estimated in gold, the value . . [673] at the time of the contract, . . deducted . . an amount which bore the same proportion to such value as the payments did to the sum specified in the bond, and . . added . . the depreciation of U. S. Treasury notes, at the time of the verdict: " [Dick, J.]

State v. Robinson, 64 N. C. 698, June 1870. [700] " The defendants . . remained amply solvent, even after the emancipation of their slaves,"

Womble v. George, 64 N. C. 759, June 1870. [760] " the slaves [remained with her], until they were emancipated,"

Lewis v. McNatt, 65 N. C. 63, January 1871. " action . . commenced in . . 1860, . . driving off his slaves and seizing the turpentine."

Erwin v. Railroad Co., 65 N. C. 79, January 1871. " the defendant hired the slaves . . on the first day of January, [1865] . . for . . one year at . . two thousand dollars each, in Confederate currency; "

Sutton v. Owen, 65 N. C. 123, January 1871. " I promise to pay . . one hundred and forty dollars for the hire of his negro Jim, for the year 1861, and to furnish . . good and sufficient clothing."

State v. Shelton, 65 N. C. 294, January 1871. [295] " the prisoner . . as late as March, 1865, . . was authorized to recruit colored troops for artillery service in the United States."

State v. Adams, 65 N. C. 537, June 1871. " the defendants . . formerly slaves . . were married in 1864, according to the custom which then prevailed . . and . . commenced cohabiting together, . . recognizing each other as man and wife, . . [538] have never complied with the acts . . of March 10th, 1866, and March 4th, 1867."

Held: not fornication and adultery, though the failure to go " before the Clerk . . or . . some Justice . . and to acknowledge . . such cohabitation, and the time of its commencement," is an indictable misdemeanor.

Hilliard v. Moore, 65 N. C. 540, June 1871. "On . . January 1st, 1866, I promise to pay . . one hundred dollars, for hire of negro girl, . . for the years 1864 and 1865 . . to be paid in current funds . . Dated July 28th, 1864."

Lattimore v. Dixon, 65 N. C. 664, June 1871. See Lattimore *v.* Dickson, p. 261, *supra*. "The defendant . . denied the allegations . . and averred that complainant, being anxious for defendant to purchase him, proposed to give him several notes [$365.95] to aid . . the referee found the defendant indebted unto the plaintiff . . one hundred and seventy dollars." Fifteen dollars more was allowed.

Alexander v. Summey, 66 N. C. 577, January 1872. [581] "the slaves, which constituted the largest part in value of his estate, were emancipated," as a result of the war.

Holland v. Clark, 67 N. C. 104, June 1872. [105] "Twelve months after date we promise to pay . . Three Hundred and Ninety-three Dollars and Seventy-five Cents, for the hire of . . [three] negro men . . and furnish them with good clothing, shoes, hat and blanket, and work them for the present year, . . January 1st, 1861."

Hutchinson v. Roberts, 67 N. C. 223, June 1872. Jenkins died in 1859, [224] "possessed of a large . . estate, . . slaves in this State and Arkansas,"

Davidson v. Elms, 67 N. C. 228, June 1872. "the first day of June next, we promise to pay Allison and Daniels, one hundred and twenty-five dollars . . for hire of negro boy . . to give him the usual clothing, say one winter suit, hat, blanket, etc., January 1st, 1857."

McLarty v. Broom, 67 N. C. 311, June 1872. At a sale, November 3, 1864, [313] "$7,000 was for a negro, . . [314] the property . . brought high Confederate prices;"

Walker v. Sharpe, 68 N. C. 363, January 1873. "the testator directs his property of every description except negroes, to be converted into cash,"

Jones v. Woods, 70 N. C. 447, January 1874. A male slave was hired for the year 1853, for $100.

Dowd v. Railroad Co., 70 N. C. 468, January 1874. [469] "On the first day of January, 1866, the North Carolina Railroad Company promises to pay to Dr. R. C. Jenkins, . . three thousand six hundred dollars, for hire of the following [four] hands, . . for the year 1865; and . . to furnish to each . . the usual clothing to hired hands—two pair of shoes, one hat, one blanket, or substitutes, payable in Confederate money," Dated January 1, 1865.

Held: the plaintiff is entitled to recover the value of the hire of the slaves for 1865, [470] "and this although the slaves were emancipated in the meantime."

Dickson v. Dickson, 70 N. C. 487, January 1874. Dickson's will: [488] "that my superannuated black people shall be supported off the plantation as long as they shall live."

Walker v. Johnston, 70 N. C. 576, January 1874. Will, 1831: [577] "at the death of my sister . . all the . . negroes herein bequeathed to [her] . . with their increase, to be sold on a credit of twelve months,"

Clark v. Williams, 70 N. C. 679, January 1874. The testator died in 1859. "Many of the slaves were settled in Louisiana and a large number in North Carolina."

Bynum v. Hill, 71 N. C. 319, June 1874. [320] "That the negroes given [in 1848] to the testator's widow for life and after death directed to be sold, would have brought some $3,500"

Gary v. Johnson, 72 N. C. 68, January 1875. [69] "medical services rendered [her] . . and her slaves,"

Bason v. Harden, 72 N. C. 281, January 1875. [284] "received his advancement in a negro girl valued at $800, and that she was an expense to him until he lost her by emancipation;"

Love v. Johnston, 72 N. C. 415, January 1875. [417] "William [[416] 'the property of the . . lunatic'], was sold [in 1857] at public auction . . at . . $1,051. It did not appear that Martha was sold at public sale; but . . taken . . at a valuation fixed by two disinterested persons, viz: at $1000."

McConnell v. Caldwell, 73 N. C. 338, June 1875. His slaves consisted of [339] "a parcel of young negroes, too young to work;"

State v. Fenner, 73 N. C. 566, June 1875. [567] "From sale of boy Fred, sold Nov. 1st, 1863, for Confederate money, $1,025, scaled, . . [568] During the war and especially the last years of the war the cost of supporting the expensive negroes was largely in excess of the ward's income. He made efforts to put them out to the lowest bidder, but . . the sums offered for certain families of said slaves were so large that he kept them at home, built houses for them and supported them."

SOUTH CAROLINA.

INTRODUCTION.

I.

The South Carolina reports contain surprises for even the seasoned reader of slave cases. At the very threshold, in a unique case,[1] that of the purchase of one slave by another, in order to set her free, Chief Justice Rutledge asks, "if the wench chose [so] to appropriate the savings of her extra labour [allowed her by her master] . . would a jury say no? He trusted not. They were too humane . . he hoped, to do such manifest violence to so singular and extraordinary an act of benevolence." The jury did not disappoint the chief justice, but, "without retiring from their box, returned a verdict for the plaintiff's ward, and she was set at liberty." To be sure, several axioms of slave law were violated in order to avoid doing violence to the benevolent act. The slave could not contract, even with her master;[2] and all her earnings belonged to him, and all she bought with them. Certainly one slave could not buy another, and Sally undoubtedly belonged to Beaty (the master of the wench), who had repented of his generosity. Judge O'Neall, in 1842,[3] admits that that case "goes further than I desire to go;" but, six years later, in advising the repeal of the act of 1820,[4] which forbade emancipation except by act of the legislature, he says: "The first thing which ought to be done, is to get back alongside of such men as C. J. Rutledge, who, in the case of Guardian of Sally . . [gave] expression . . [to] the benevolent feelings which had been tried in the crucible of the revolution; there was perhaps no very correct notion of the law in the ruling of the case, yet it spoke what, I think, always belongs to Carolina—a love of mercy, of right, and a hatred of that which is mean or oppressive. Until fanaticism and folly drove us from that position, the law of our State had uniformly favored emancipation . . with such limitations and guards as rendered the free negro, not a dangerous, but an useful member of the community, however humble he might be."[5]

It was in 1800[6] that the first step was taken by South Carolina away from that liberal position. The preamble to the act of that year regulat-

[1] Guardian of Sally (a negro) *v.* Beaty, p. 275. *infra.*

[2] But a contract by a slave was recognized by the Court of Appeals, in Linam *v.* Johnson, decided in 1831. P. 344, *infra.* See also the act of 1833, ch. 81, sect. 1. Car. and Nich. 279.

[3] Carmille *v.* Carmille, 2 McMullan 454 (471).

[4] Vinyard *v.* Passalaigue, p. 404, *infra.*

[5] 2 Strobhart 536 (548-549).

[6] "Before the act of 1800, . . there was no law prescribing the mode in which a master should emancipate a slave." Judge Johnson, in Linam *v.* Johnson, 2 Bailey 139.

ing emancipation [7] recites that "it hath been a practice for many years past in this State, for persons to emancipate . . their slaves, in cases where such slaves have been of bad or depraved characters, or, from age or infirmity, incapable of gaining their livelihood by honest means: to prevent which practice in future" it is enacted that the prospective emancipator shall produce the slave or slaves before a justice and "five indifferent freeholders, . . and shall answer . . upon oath, all such questions as they shall ask concerning the character . . and . . ability to gain a livelihood in an honest way;" and if answered to the satisfaction of a majority of them, they are to give a certificate to that effect; and "no emancipation . . shall be valid . . except it be by deed, . . accompanied by the above mentioned certificate . . recorded within six months . . And in case any slave shall . . be . . set free, otherwise than according to this Act, it shall . . be lawful for any person . . to seize . . and to keep [him] as his . . property, . . *provided* . . that no part of this Act shall be construed so as to . . invalidate any disposition by will of persons now deceased."

However, the sword was two-edged. It was not always the opponents of emanicipation (usually the next of kin) who arrived first to make the seizure.[8]

The act of 1820 [9] forbade emancipation thereafter, except by act of the legislature; and the act of 1841 [10] made void every bequest which directed slaves to be carried out of the state, in order to secure their emancipation. Samuel McCorkle, who died in 1839, had made such a provision in his will, to take effect after the slaves had been hired out long enough to pay his debts. The Court of Appeals held, in 1844, that a trust resulted for the next of kin,[11] the testator's debts not having been paid before the act of 1841 was enacted, and dismissed, in 1845, a petition for a rehearing.[12]

The shades of Somerset [13] and of "the slave Grace" [14] might seem to have hovered over little Patrick, who was taken by his master, Quinn, to Ireland in 1832 or 1833. Quinn died there, having executed a codicil to his will in 1834, bequeathing "£50 sterling to the black child" and consigning him to the care of his widow, whom he "allow[s] . . to give him a good education, and . . send him to a decent trade." The widow married again and returned to Charleston in 1838, bringing Patrick, then

[7] Act of Dec. 20, 1800, sects. 7-9. 7 St. at L. of S. C. 442, 443.

[8] Linam *v.* Johnson, p. 344; Frazier *v.* Frazier, p. 359; Escheator *v.* Dangerfield, p. 447, *infra*.

[9] Act of Dec. 20, 1820, sect. 1. 7 St. at L. of S. C. 459. See Judge O'Neall's opinion, in Vinyard *v.* Passalaigue, p. 404, *infra*.

[10] 11 St. at L. of S. C. 155; also, 10 Richardson 190 n.

[11] Gordon *v.* Gordon, p. 392, *infra*.

[12] Blackman *v.* Gordon, p. 398, *infra*.

[13] Lofft 1. See vol. I. of this series, p. 14.

[14] 2 Hagg. Adm. 94. See *ibid.*, p. 34.

between ten and twelve years old. Seven or eight years later, he was sold for the debts of her second husband and bought by her, she being a " sole trader." She soon sold him to a new mistress, from whom he ran away two years later. In an action of trover in 1850,[15] against the administrator with the will annexed of Quinn, with a count also " in case . . for inducing . . the negro to runaway," the jury were charged that " Patrick having been . . carried by the testator to Ireland, . . became . . *free.* That . . if his master had not intended he should be free," he would, on returning to South Carolina, have resumed his *status* of slave. Such had been the case of Grace, on her return with her mistress to Antigua. " But it was apparent from the codicil, the testator treated him as free; " The jury found for the defendant, and Judge O'Neall, in his opinion refusing a new trial, observes in addition, that Patrick did not return to South Carolina " of his own will [as Grace did]; for he was a minor " and his silence, when sold, " could not affect his right to freedom; for the *status* arising from his color compelled him to be silent."

The free negroes of South Carolina were accorded many of the privileges of white men. Judge Colcock, in 1826,[16] asserts that " they are a part of our militia, required to perform the duty of pioneers and musicians . . They have been permitted to hold land, . . and there are now thousands of them . . in possession of such property. And although they have not, like the freed men of Rome, or Athens, become incorporated in the body politic, it has no doubt been the result of the mark which nature has put upon them. . . some who have lost that distinctive mark,[17] hold offices, as well as lands, and even seats in the legislature."

Those who had " lost that distinctive mark " received a full measure of justice from the courts of South Carolina. In 1835 [18] Judge Harper declared, that neither the state constitution nor the statutes defined " mulattoes and persons of color." " We cannot say what admixture . . will make a colored person, . . The condition . . is not to be determined solely by . . visible mixture . . but by reputation . . and it may be . . proper, that a man of worth . . should have the rank of a white man, while a vagabond of the same degree of blood should be confined to the inferior caste. . . It is hardly necessary to say that a slave cannot be a white man." Justices Johnson and O'Neall concurred.

II.

" Until December 1824 there existed in South Carolina the strange anomaly of two courts of appeal, of final resort; the one of equity, the

[15] Guillemette *v.* Harper, p. 418, *infra.*
[16] Hardcastle *ads.* Porcher, p. 334, *infra.*
[17] State *v.* Davis, p. 346.
[18] State *v.* Cantey, p. 358, *infra*; see also Johnson *v.* Boon, p. 385, and White *v.* Tax Collector, p. 400, *infra.*

other of law. At law, the state was divided into six circuits; there were six law judges, who were required to ride these circuits; . . at the termination of each of these circuits or terms . . [they] met . . [and] heard all appeals from the circuits. . . In equity, the state was divided into four circuits, and there were five chancellors, who, at the end of their circuits, likewise, met . . to hear the appeals from their circuits." [19] This system was abolished by the act of December 17, 1824,[20] and a court of appeals, for the courts both of law and of equity, was established, consisting of three judges. This act was repealed in 1835,[21] and the courts were reorganized by the act of 1836,[22] which provided "that all appeals from the courts of law shall be . . determined in a court of appeals, consisting of the law judges; and . . all appeals in equity . . in a court of appeals, consisting of the chancellors; . . That upon all constitutional questions . . an appeal shall be to the whole of the judges. . . That the judges of law and equity, when assembled as aforesaid in one chamber, shall form a court for the correction of all errors in law or equity, in the cases that may be heard before them."

A "separate" Court of Appeals was established in 1859, consisting of three judges.[23] The constitution of 1868 provided for a Supreme Court, consisting of a chief justice and two associate justices.

[19] D. J. McCord, in the preface to the first volume of his *Chancery Cases*.
[20] 7 St. at L. of S. C. 325.
[21] *Ibid.*, p. 334. Consult *ibid.*, pp. 163-342, for acts relating to courts, down to 1838.
[22] *Ibid.*, pp. 339-341.
[23] 12 St. at L. of S. C. 647.

Re Batten, 1 Counc. Journ.[1] 54, February 1673. "Resolved [February 24] that Lieu't Coll John Godfrey and Capt. Maurice Mathews be commissioned to follow, and take the bodyes of Richard Batten, and William Loe who . . 22th of February . . run away from this settlem't and have stolne, a Negroe belonging to Capt. Nathaneel Sayle, and diverse other goods" March 10. [55] "Forasmuch as Richard Batten and William Loe have been arraigned and found guilty . . and judgm't of death . . passed upon them, and the execution thereof this day to be done, And the said persons haveing with extraordinary penitency expressed their . . [56] deep sence of their crimes . . And upon the earnest solicitacon . . of the Ladyes and Gentlewomen of this Country It is Resolved that the execution . . be suspended,"

Re Sir John Yeamans's Negroes, 1 Counc. Journ. 81, April 1677. "Upon the motion of . . Moore Attorney for Capt. William Walley and Dame Margarett Yeamans his Wife the Relict of Sir John Yeamans Barr't deceased for an Injunction to inhibitt the transportation of fourteene Negroe Slaves part of the estate of Sir John Yeamans . . out of whome . . Dame Margarett Yeamans should have her thirds: It was then ordered . . by the mutuall consent of . . Moore . . and Mr John Yeamans Attorney for Dame Willoughbie Yeamans Guardian to Sir John Yeamans a minor, that twelve other Negroe Slaves now remaining at Wappoh shall . . remain there security to . . make good what Dower may be recovered by . . Margarett Yeamans out of the said fourteen Negroe slaves now to be transported to the said Lady Willoughby Yeamans being part of the estate of the said Sir John Yeamans deceased in this Province."

Re Sothell, 2 Counc. Journ. 19, May 1692. [20] "Girrard being Examained did . . give the Decleration following . . Sothell . . told me . . that 8 *s* was taken for each head of negroes that goeth of [off?] which was Extortion"

Re Indian Boy, 2 Counc. Journ. 55, August 1692. "On the aplication of Alatamhaw cheife King of the yamasees concerning an Indian boy that he calls his Sonn It is ordered that Mr. Phillipp Mullins doe forthwith deliver the Said Indian boy . . to Joseph Blake Esq'r . . Blake payeing eight pounds Currant money to . . Mullins and in case . . Mullins shall refuse . . the Provost Marshall is hereby ordered to apprehend . . Mullins and him in close prisson keepe untill he delivers the Said boy . . or be otherwise discharged by due course of Law."

Jenkins v. Putnam, 1 Bay 8, January 1784. "a privateer . . was fitted out in North-Carolina during the late revolutionary war, and in the course of a cruise against the enemy, the crew landed on Edisto-Island, while it was under the protection and jurisdiction of the English, took

[1] Ed. A. S. Salley (1907).

away a number of negroes, the property of Jenkins [an American citizen], . . and carried them to Washington, in North-Carolina, where they were condemned in a court of admiralty there, and sold as the property of the enemies of the United States, or their adherents."

Held: [9] "it was the duty of the plaintiff to have interposed his claim . . in the court of admiralty in North-Carolina, . . His not doing it, was a tacit admission of the legality of the capture."

Whitaker v. English, 1 Bay 15, April 1784. "Trespass for entering . . plantation [in 1780], and taking away . . negroes, . . The defendant . . was one of those deluded citizens of America, who joined the British army in the late war, . . no part . . was appropriated to his private emolument, . . [16] Verdict for plaintiff,"

Terry v. Brunson, 1 Rich. Eq. 80 n., June 1784. "the eight negroes consisted of 1 fellow, 4 boys, 1 wench and child, and 1 girl, all valued at a sum equivalent in federal money to $1198.42, making the average value of the slaves $148.55"

Turnbull v. Ross, 1 Bay 20, January 1785. "an action of trover, brought to recover a negro wench, Nancy. . . During the war, . . some of Dr. Turnbull's negroes ran off, or were taken by a plundering party, from a settlement of his, called Smyrnea, in East-Florida, and carried into Georgia. The wench in question (with one or two others) was afterwards brought into this state, and she came fairly and honestly into the possession of the defendant, by purchase. The plaintiff, in the mean time, removed from East-Florida into this state, and became an American citizen. . . [23] The jury found for the plaintiff to the amount of the value of the wench and children."

Porter v. Dunn, 1 Bay 53, July 1787. Porter "was an officer in general Sumter's brigade, in 1780 and 1781; and the defendant, a planter on Black river, who had joined the British while they were at Camden, and performed duty as a soldier in their militia. The negroes in question [Peter, his wife, and three children] were formerly the property of the defendant, but had been captured while the defendant was with the British, and delivered over to the plaintiff in lieu of pay, for his services as an officer in the line, and taken into North-Carolina, where he resided. They were afterwards enticed away by the defendant, . . there was no money in circulation to enlist men, or bring them into the field, the continental and state currencies having about that time died a natural death. . . [54] that in the course of the distribution of the negroes among the troops, . . the wench, Peter's wife, and one child, were delivered to Porter, the plaintiff; that he purchased Peter from a brother soldier; and that the wench had two children while they were in his possession. . . [57] verdict for the plaintiff, to the amount of the value of the negroes.[1] . . [58] The defendant . . afterwards applied to the legislature for redress."

Steel v. M'Knight, 1 Bay 64, 1789. Leslie, "employed by Barnes, the grandfather of Steel, as a ploughman, . . was called . . out of the field,

[1] Act of 1784, "for indemnifying general Sumter."

. . Barnes told him, that he had given the wench Venus (who was then a girl) to his grandson . . upon which he called the girl, and put her hand into that of his grandson, saying to Leslie, 'Bear witness to this gift: I give this girl to my grandson,'" Held: the gift was complete.

Ham v. M'Claws, 1 Bay 93, October 1789. Seven negro slaves belonged to the two infant children of Mrs. M'Claws. [94] "that the claimants had been, for some time previous to the seizure, settlers at the British settlement on the Bay of Honduras; but in consequence of a great scarcity of provisions, which had nearly produced a famine . . they had been induced to leave the settlement, and come to Carolina with a view of actually settling. . . that previous to their sailing from the bay, (about the latter end of August or beginning of September, 1788,) they had taken much pains to inform themselves whether there was any law of force in this country which prohibited them from taking along with them, the negroes belonging to the children, and were informed, that provided they went as *actual* settlers, there was no law which would operate against them; but if negroes were taken for sale, they would become forfeited.[1] That under these assurances, they embarked. . . [95] never arrived in the port of Charleston till within a few days after the 4th of November following. . . impossible for them to have known of this latter act, as they were, on the day it passed,[2] on the high seas,"

Held: [98] "the legislature never had it in their contemplation to make a forfeiture of the negroes in question, and subject the parties to so heavy a penalty for bringing slaves into the state, under the circumstances . . proved."

Beresford v. Elliott, 1 Desaussure 183, December 1790. [186] "That many of the negroes of the estate were lost by death or desertion to the British,"

State v. Gee, 1 Bay 163, Spring 1791. "The prisoner, Gee, was indicted, under the negro act, for the murder of a negro boy, named Sawney, the property of Abraham Cohen, by shooting with a gun loaded with shot. The jury . . .brought him in guilty of wilful murder; and being unable to pay the fine of 700 *l.* currency, imposed by the clause of that law, the court sentenced him . . to seven years' imprisonment, and to be kept at hard labour during that time. . . a motion was made . . to admit him to prison-bounds, preparatory to his taking the benefit of the insolvent debtor's act; . . [164] Pinckney and Ford, for the prosecution, argued, . . the atrocity of the offence . . had deserved death. That the frequency of the offence was owing, in a great measure, to the nature of the punishment, . . only a pecuniary fine where the party was able to pay, and imprisonment and hard labour where he was not . . therefore, the law, which was a penal one, ought to have a rigid construction." Motion denied.

[1] Act of Mar. 28, 1787.
[2] Nov. 4, 1788.

Phaelon v. M'Bride, 1 Bay 170, May 1791. "A negro boy was bound as an apprentice . . to learn the trade of a hair-dresser. He was seized, under a warrant of distress, for rent, . . due by the master to whom he was bound."

Held: "not liable to be distrained; upon the principle that goods in the way of trade are exempted; and also, because indentures of apprenticeship are not, even in England, liable to distress."

Eden v. Legare, 1 Bay 171, May 1791. "Slander, for calling the plaintiff a mulatto. . . the Court resolved, that the words in themselves were, in this country, *actionable*, and Rutledge, Ch. J. mentioned several cases where it had been formerly held that an action lay for them; because, if true, the party would be deprived of all civil rights, and moreover, would be liable to be tried in all cases, under the negro act, without the privilege of a trial by jury. Any words, therefore, which tended to subject a citizen to such disabilities, were actionable. As the plaintiff did not go for vindictive damages, . . Jury found 3 *l.* damages, and costs."

State v. Welch, 1 Bay 172, May 1791. "an indictment was preferred against the prisoner, for murdering a negro slave, the property of Mr. Radcliffe. . . the prisoner had taken up the negro on some pretext or other, and afterwards carried him on board of a schooner he then commanded; where, either in attempting to tie him, or secure him from going off, he threw a lead-line round the negro's neck, and strangled him." There was no person present but the parties themselves. "Pinckney, counsel for the prisoner . . offered the prisoner's exculpatory oath under the negro act, . . *Sed per Tot. Curiam.* This oath . . is only to be . . allowed to *masters, overseers, or others,* having the *charge* . . of negroes; . . The prisoner was found guilty of manslaughter; . . sentenced . . to pay a fine of 50 *l.* sterling, and stand committed till paid."

Greenland v. Brown, 1 Desaussure 196, September 1791. [197] "That she was possessed [in 1787] of two tracts of land, thirty six negro slaves, . . [198] That the crop of 1787 was not sufficient to feed the negroes; . . obliged . . to purchase corn for their use"

Johnston v. Dilliard, 1 Bay 232, April 1792. "Special action on the case, in nature of ravishment of ward, to try the freedom of a negro female slave called Miley, and her children. The plaintiffs in this action were of the society of the people called Friends or Quakers, and had taken uncommon pains to procure this wench and sundry others, their freedom. It was . . admitted at the trial, that Johnson's [*sic*] zeal on this and other like occasions, had induced him to ride near 10,000 miles at different times, in order to establish the freedom of a number of negroes, held in slavery in this state and in Georgia; and that he was supported in this arduous undertaking, by a society, or societies, formed in the northern states for that purpose. In support of the action, a deed was produced from one Charles Moorman, formerly of Virginia, deceased, . . one of the Society of Friends in that state, bearing date the 28th of May, 1778,

in which he manumits . . a number of his negroes, and among others, the wench Miley, after she should arrive at the age of 18 years. His last will[1] . . was next produced, bearing date the 2d of September, 1778, proved . . under the great seal . . of Virginia, in which he *lends* to his children, his male slaves until they should arrive at 21 years of age; and the females, until they should arrive at 18 years of age; then to be free. An act[2] of the state of Virginia was next produced, . . [233] passed the 27th of August, 1788, giving a legal sanction to the deed of manumission, and last will . . of old Moorman; saving, nevertheless, the rights of individuals, who might have a legal claim on any of the negroes in question. Several witnesses were called on behalf of the defendant, who in substance proved, that in the year 1669 [1769], one James Taylor married Mary, one of the daughters of Moorman; and that soon after, when they . . went to house-keeping, the wench in question, then a girl, was permitted to go along with his daughter Mary, . . That he also gave to his other children as they married, a negro each. That after remaining several years in their possession, to wit, till some time in . . 1778, Taylor and his wife sold the wench in question to the present defendant."

Held: this was a good gift, and, [235] "therefore, the deed of manumission was utterly void in law, as far as it related to the wench now in question." [Bay, J.]

Fannen v. Beauford, 1 Bay 235, April 1792. "bond . . dated in December, 1779; . . [236] conditioned for the delivery of a negro man, . . value 600 *l.* [old currency.]"

The Guardian of Sally (a negro) v. Beaty, 1 Bay 260, May 1792. "a negro wench slave, the property of the defendant, by working out in town, with permission of her master, had, by her industry, acquired a considerable sum of money, over and above what she had stipulated to pay for her monthly wages, to her master; and having an affection for a negro girl, Sally, she purchased her with this money, which she had been for years accumulating, and gave her her freedom. For a considerable time after the purchase was made the defendant never claimed any property in the negro girl—never paid taxes for her; but, on the contrary, acknowledged he had no property in her. Some short time, however, before the commencement of the present action, when called upon to deliver up the girl as free, he refused; in consequence of which this action was brought. . . [262] Rutledge, Ch. J. . . in his charge to the jury, observed, that . . if the master got the labour of his wench, or what he agreed to receive for her monthly wages, (which was the same thing,) he could not be injured; on the contrary, he was fully satisfied, and all that she earned over ought to be at her own disposal;[3] and if the wench chose to appropriate the savings of her extra labour to the pur-

[1] See vol. I. of this series, p. 93.

[2] 12 Hening 613.

[3] Judge O'Neall, in Carmille *v.* Carmille, 2 McMullan 454 (471): "That case goes further than I desire to go; but it is ample authority to prove, that by the law of this State a slave might acquire personal property,"

chase of this girl, in order afterwards to set her free, would a jury of the country say no? He trusted not. They were too humane and upright, he hoped, to do such manifest violence to so singular and extraordinary an act of benevolence. The jury, without retiring from their box, returned a verdict for the plaintiff's ward, and she was set at liberty."

Parker v. McIver, 1 Desaussure 274, June 1792. "G. Howell, a merchant of London, fitted out the brig *Favorite,* placed a cargo on board, and put Capt. John McIver in command of her, with instructions to pursue a particular voyage. Capt. McIver accordingly went to Madeira, where he obtained a cargo of wine, . . [275] That he proceeded to Africa as he was directed, and getting a few slaves sailed for America," [274] "came into port [Charleston] with his . . cargo, except the negroes, whom he sent by a lighter to Georgia."

Moore v. Cherry, 1 Bay 269, September 1792. "a negro man slave, taken during the war, . . from some persons called *tories,* by a scouting party under the command of one Col. Brandon, who afterwards sold the property . . and divided the proceeds among the party."

Shubrick v. Russell, 1 Desaussure 315, March 1793. [320] "In May 1784, Rose sold M'Queen's negroes [in Georgia] to the amount of 5000 *l.* sterling,"

Bull v. Horlbeck, 1 Bay 301, May 1793. "Cobb had rented a tenement from [Horlbeck] . . and there being due for rent in arrear . . he seized . . [Bull's] negro, who happened to be found accidentally on the premises. . . [302] The Chief Justice and Grimke, J, . . mentioned to the jury, that negroes [so] circumstanced . . had always been considered as liable to distress. . . Bay, J. was of a contrary opinion. . . [303] the strictest watching could not, at times, prevent them from visiting their acquaintances in a neighboring plantation or yard. Tradesmen's negro apprentices were striking instances of the necessity of such exemptions; and he was of opinion, that the same rule should extend to hired negro tradesmen of every description, and all other negroes belonging to third persons.[1] The jury found for the plaintiff."

Fitzpatrick v. Smith, 1 Desaussure 340, June 1793. [344] "Fitzpatrick bought cloth for the negroes, and left it to be made up for them. . . the rice . . had been planted by Fitzpatrick's negroes"

Timrod v. Sholbred, 1 Bay 324, September 1793. "a family of negroes was sold at public auction, viz. a fellow called Stepney, a ploughman, his wife, a young wench, their daughter and her child, bid off at 170 *l.* It appeared, in evidence, that Stepney . . broke out with the small-pox, the day after the sale, and died; . . the negroes were taken from a house where the small-pox had been, but it did not appear that the plaintiff [the vendor] knew that either of these negroes had taken the infection."

Held: [325] "In every contract all imaginable fairness ought to be observed, especially in the sale of negroes, . . selling for a sound price,

[1] See act of December 1799, by which slaves of third persons are exempted.

raises, in law, a warranty of the soundness of the thing sold. . . This warranty extends to all faults, *known* and *unknown* to the seller; and although, in general, it principally relates to *title* and *qualifications*, and not to *longevity*, yet, in some cases, it ought to be construed to extend to the latter. For if the negro sold had about him, at the time of sale, the seeds of a disorder generally difficult of cure, and which occasioned his death, it would be unreasonable to say that the purchaser shall sustain the loss." "The jury returned a verdict for the plaintiff, deducting the amount of . . Stepney."

The Ordinary of Charleston District v. Corbett, 1 Bay 328, September 1793. "during the war, when the British general Prevost's army invaded this country, the plantation of the intestate was broken up—all his negroes carried off—his house burnt—and near 800 ounces of plate taken away; so that the estate was totally ruined by the devastation of the enemy."

Heyward v. Hazard, 1 Bay 335, January 1794. [341] "He struck a dozen blows against the wall, with his hands, thinking it was his man Ben whom he beat,"

State v. Thackam and Mayson, 1 Bay 358, May 1794. "The defendants were indicted for a riot, in entering into the plantation of Colonel Gervais, at twelve o'clock at night, in January last, and breaking open an inner room in a kitchen, and taking away in a tumultuous manner, sundry negroes, etc. It appeared in evidence, that they took a negro man with them, who was armed as well as the defendant, and that they were the only persons present when this outrage was committed."

Held: [359] "a *negro was, in contemplation of law*, such a person as was capable of committing a riot, in conjunction with white men."

State v. Cynthia Simmons and Laurence Kitchen, 1 Brevard 6, Fall 1794. "The indictment stated the murder of John Simmons, the husband of the prisoner, Cynthia, by a negro man slave, the property of the deceased, and charged both the prisoners as accessaries before the fact."

Held: a white man may be indicted and convicted as an accessory to a murder committed by a slave. [8] "Negroes are under the protection of the laws, and have personal rights, and cannot be considered on a footing only with domestic animals. They have wills of their own—capacities to commit crimes; and are responsible for offences against society:" [Waties, J.]

Garner v. Garner, 1 Desaussure 437, March 1795. "a marriage settlement . . 1768, . . that the trustees should hold . . [her twelve] slaves, in trust; . . 'that they would suffer her to hire out and work the . . slaves, and the issue of the females, and receive the profits . . during her . . life;'"

Croskeys v. O'Driscoll, 1 Bay 481, May 1795. "the defendant said the plaintiff harboured his negro," Held: the words are not actionable.

Neufville v. Mitchell, 1 Desaussure 480, March 1796. Complainant sold "137 negroes for 8905 *l.* . . [481] defendant . . states . . many of

them were diseased and not taskable; . . [483] all the witnesses swear that they are a prime gang, are as orderly as most negroes and as good as any for work; there are more workers than are usually found in so large a number. . . As to those children that died with the whooping cough; . . one child died the day it was landed [from a plantation on the Savannah River]; . . [484] five or six had it afterwards and died; they were from two to three years old." The defendant picked the negroes "out from different gangs."

Held: "he has no one to blame but himself."

Stuart v. Carson, 1 Desaussure 500, September 1796. [505] "The testator [in 1777] bequeathed to his wife . . [506] one third of all his negroes, with a right of electing some of them from among his house servants."

Evans v. Evans, 1 Desaussure 515, September 1796. [516] "a few months after the testator's death, . . 1779, the executors sold . . his negro slaves [about eighty], without any necessity to do so"

White v. Chambers, 2 Bay 70, 1796. "that the negro in question, had the care of his master's fishing canoe on Sullivan's island, when the defendant went down to the landing place where it was, and said he would take it, and go out fishing in it. The negro told him he could not have it, as his master had given him orders to let no one take it away, as he was in the constant habit of using it himself, and he expected him down every minute to go out in it. The defendant, however, persisted in taking it away, and the negro in obeying his master's orders in refusing to let him have it, upon which some high words passed between them . . [71] whereupon the defendant struck him a blow with his fist, and then took up a paddle, which was in the canoe, and knocked him down, and afterwards beat him very severely, which laid him up for several days before he was able to go about his master's business again. It was . . for this injury done to his servant, that the master brought the present action. The defence set up . . was, that the negro was insolent to him, and that the beating was not more than proportioned to the nature of such insolent language. And . . that . . the plaintiff could not maintain . . action for a personal injury . . to . . a negro, . . [74] verdict, for 5 *l.* sterling, and costs of suit."

Rule for new trial, discharged: I. [74] "The late chief justice had . . informed them, that similar actions had been supported by the king's judges, many years ago, under the colonial administration; and no doubt was entertained by them previous to the revolution, . . [75] Compensation for the bare loss of labour, is not an adequate remedy, . . [II.] where a slave behaved amiss . . complain to the master, . . But if . . he was refused reasonable satisfaction; . . appeal to a civil magistrate"

State v. Fraser, 2 Bay 96, 1797. Judge Waties [98] "mentioned the case of a man who had been indicted for murdering a negro, which was the highest species of misdemeanor known in our laws,"

Rose v. Macleod, 2 Bay 108, February 1797. Action "on a bond dated November 10th, 1785, given by defendant to plaintiff, in the penalty of seventy-six new negroes, conditioned 'to pay and deliver thirty-eight negroes, on the second day's sale of any cargo defendant might choose, which he should import between that time and January 1, 1787, and if none should come by that time, a farther indulgence was to [be] given till January 1, 1788, with interest of 7 *per cent.* to be paid annually.' . . the defendant pleaded that the legislature . . in March, 1787, passed a law prohibiting the importation of slaves from Africa, or other parts beyond sea," The court held that [109] "although the intervening act . . prevented the specific delivery of the thirty-eight new negroes, . . yet . . the contract was not . . rescinded, . . the jury gave a verdict for the plaintiff for the average value at 52 *l.* sterling, round."

Snow v. Callum, 1 Desaussure 542, July 1797. [543] "With respect to the bequest of freedom [in the will of George Snow] to . . Minda and her increase, after ten years from testator's death, his intention is so plain that there can be no doubt but the children were emancipated, though their mother died within the ten years." [Rutledge, Ch.]

Booth v. L'Esperanza, 3 Fed. Cas. 885 (Bee 92), March 1798. "the crew of the *Ranger* discovered *L'Esperanza* making a signal of distress. That, suspecting her to be a privateer, they kept on their course; but, perceiving that a boat from the *Esperanza* with only two hands on board was following them, hove to. . . there were in her a Spanish boy, and a negro called Williamson, who said that the *Esperanza* had been captured, sixteen days before, off the Moro castle, by the *Charlotte,* a privateer belonging to New Providence, who put this boy and two negroes into the prize, and ordered her to that port. That they . . had neither provisions, water, compass, nor chart. Captain Booth supplied them with all these, and they then returned to their vessel. But the Spanish boy and negro Williamson came back, and requested they might remain on board the *Ranger*; saying that the other negro, who was a slave, refused to quit the vessel, or give her up. Booth . . sent his mate, Cooke, to take charge of her, together with the Spanish boy, and the negro slave; . . Cooke navigated her safely into this port; . . Restitution is contended for to the captors, on the ground of possession, (by virtue of the capture, and of the laws of war) at the time the *Ranger* met with their prize. . . The two negroes . . maintain that they held her for the captors. But it is said that, as slaves, they were incapable of possession for any purpose whatsoever. This doctrine, however, goes too far; 1st. Because by the laws of this state, a slave authorized by his master to do an act, which a slave could not otherwise do, is justified, provided the master avows the order. 2dly. Because, as most of our coasters are navigated by slaves, and frequently commanded by a slave, the owners would be continually exposed to loss of their property, in case a vessel should be blown to sea, as is often the case. There can be no doubt, however, that slaves in such a circumstance would be allowed to represent their owners, and to prove their property. It was determined in this court on solemn argument, in the case of Stone *v.* Godet, that the owner of a slave could maintain a

suit for his wages as mariner on board a coaster. The general policy of the country as to slaves must, therefore, admit of exceptions in particular cases." Pelaiz, the Spanish boy, said that the *Esperanza* " was bound to Providence. But it is said he was compelled to do so, lest the negroes should discover his intentions. If this was the case, he had not such a command on board as enabled him to go where he pleased, contrary to the consent of the owners. And this is further evinced by the conduct of the old negro, who, after Pelaiz and the other had offered to give up the vessel to the *Ranger,* still refused to go any where but to Providence. Pelaiz, in fact, reliquished his command to the black man, who, by his own account, held her for the British. . . the evidence of [Pelaiz is] . . insufficient to destroy the right of the British captors;" [Bee, J.]

Collins v. Westbury, 2 Bay 211, April 1799. " on their way removing to Georgia, . . the plaintiff sued out an attachment . . and seized their negroes . . [212] to proceed without their negroes, would have been leaving themselves without the means of support. . . they . . gave the bond"

State v. Doctor James, 2 Bay 215, April 1799. Indictment " for branding a negro with a hot iron, contrary to the form of the act of the legislature, . . which inflicted a fine of 100 *l.* for such an offence. . . convicted on very clear testimony," Judgment arrested: " the prosecution was not commenced until after . . six months next after the offence"

Leonard v. Caskin, 15 Fed. Cas. 337 (Bee 146), June 1799. " Captain Leonard only says that he boarded this vessel at sea, that she had on board ten slaves, and was going from Martinique to the Havanna. This might give cause for suspicion, but no more. The act of congress declares that the persons on board must be taken and transported with intent and purpose to sell them as slaves. The bare transportation of negroes from one place to another without proof of an intention to sell, will not incur this penalty." [Bee, J.]

Wade v. Barnwell, 2 Bay 229, 1799. " that sundry negroes . . which formerly belonged to a Mr. Knox, a British subject in Georgia, had been confiscated during the revolutionary war, and sold; but that some time in . . 1778, when the British repossessed themselves of Georgia, and overrun that country, Knox, the original owner of the negroes, regained possession of them, and when at the close of the war, the British finally evacuated that state, took them off with him to Jamaica, where he kept them several years, and then sent them into South Carolina for sale, when the defendant . . became the purchaser: whereupon Wade, who claimed under the sale by virtue of the confiscation act in Georgia, commenced his action of trover for recovery of them, as being his property." Judgment for the defendant.

Lowndes v. Lemprire, 1 Desaussure 590, June 1800. " It is evident that testatrix intended to give complainant ten negroes under the age of fifteen years, and in doing so, probably contemplated the tender age of complainant herself. . . [to] another of her nieces . . ' six young negro women slaves.' . . decreed that ten negroes, agreeable [*sic*] to the be-

quest . . [591] be chosen for complainant, and if . . any . . have died since the list filed, others shall be chosen as nearly of the age of those"

Brailsford v. Heyward, 2 Desaussure 18, November 1800. Will, dated 1776: [30] "I give . . also one mulatto carpenter boy," [20] "there were on Portroyal plantation [in 1777], . . 53 negroes, . . On Rose Hill plantation, . . forty-one negroes . . [21] on Cole's Island, . . about thirty"

Jelineau v. Jelineau, 2 Desaussure 45, June 1801. "bill . . for alimony . . that the complainant, (a lady from St. Domingo) intermarried in . . February, 1800, with Francis Jelineau, (also from St. Domingo,) . . That he cohabited with his own slave, by whom he had a mulatto child, on whom he lavished his affection; whilst he daily insulted the complainant, and encouraged his slave to do the same. . . [51] That at dinner one day, he took away the plate from complainant when she was going to help herself to something to eat, and said, when he and the negro had dined she might." [46] "The defendant states that at the time he was about to marry the complainant, he informed her that he had a mulatto child, born to him in St. Domingo, (where he stated, it was not disgraceful to have such connexions,) . . and the complainant promised to behave kindly to said child." Alimony decreed.

Taylor v. Twenty-five Thousand Dollars, 23 Fed. Cas. 806 (Bee 175), November 1801. "the schooner *Friendship* . . was wrecked . . upon the Rattlesnake shoal . . two miles distant from any shore. . . the crew were in great danger, . . they were overjoyed at the sight of a canoe and four hands, with which Taylor and Deliessline had come to their assistance. . . Deliessline's risque was unquestionably great; for, if he had perished with his boat and negroes, his numerous family would have been exposed to severe distress."

Smelie v. Reynolds, 2 Desaussure 66, January 1802. [70] "offered for sale an entire family, without restricting it to his life estate in them. . . sold one . . because worthless and diseased."

State v. Johnson, 2 Bay 385, May 1802. The prosecutrix, "having a previous dispute with the magistrate, for committing her negro to gaol, went to his house, while he was in the execution of his office as a magistrate, and before sundry persons, insulted him to his face, as also the constable who had taken the negro to gaol."

State v. May, 1 Brevard 160, May 1802. "convicted . . for buying corn from a slave, contrary to the act of 1796,"[1]

Snee v. Trice, 2 Bay 345, November[2] 1802. "Trice, the defendant, had hired a field, which had been planted the year before with corn by the plaintiff Snee, in which stood a crib or corn-house, where the plaintiff had stored his crop of corn the preceding year. Early in . . March, while . . Trice was clearing up this field preparatory for his planting his ensuing crop, his negroes, who were engaged in this business, made a fire in

[1] 2 Faust 91.
[2] 1 Brevard 178.

the field, as is usual among negroes; which, it is likely, was at no great distance from this corn-house. The morning . . was still and quiet, but towards the middle of the day the wind blew up fresh, which is very common at that season of the year, and communicated the fire to some light combustible materials about this building, while the negroes were at work in a distant part of the field, . . and burnt it down, and the corn in it. Every possible exertion was made by the brother of the defendant . . and the negroes, to save the house and corn, but to no purpose," Counsel for defendant: [347] "it was well known to every planter in Carolina, that it was . . customary, and had been so from time immemorial, for negroes to carry fire into the fields with them, sometimes for warmth, at other times for cooking their meals, and at all times for their tobacco pipes, of which they were so fond that nothing could keep them from the use of them; and he would be deemed a very hard and cruel master indeed, who would attempt to deprive them of the use of this article so essential to their comfort." Judge Bay charged the jury: [348] "that there were many cases . . where masters were answerable [in damages] for the conduct of their negro servants; as in all cases where negroes are permitted to perform any public duty, or to carry on any handicraft trade or calling, or to perform or superintend any other kind of business where public confidence is to be reposed: as, for instance, keepers of public ferries. If negroes perform their duties so negligently or carelessly that a traveller's horse or carriage is lost or injured, the ownes are liable; so if a negro blacksmith prick or injure a horse in shoeing, the master is liable; so also of a negro taylor who spoils clothes or embezzles cloth, or a negro miller who takes more toll than the law allows, . . [349] but in no case, where any unauthorized act is done by a slave in his private capacity, without the knowledge or approbation of his master. . . The jury, however, . . found a verdict for the plaintiff to the whole amount of the value of the corn."

Verdict set aside, and a new trial granted: "the rigid doctrine . . in England . . [350] was by no means applicable to the . . circumstances of Carolina, where almost the whole of our servants are slaves. They were in general a headstrong, stubborn race of people, who had a volition of their own, and the physical power of doing great injuries to neighbours and others, without the possibility of their masters having any control over them; especially when they happened to be at a distance from them; and experience had taught us how little they adhered to advice and direction when left alone. . . in the present case, . . very doubtful . . whether they were to blame . . They admitted the doctrine of responsibility of masters, for the acts of their servants, in all cases in the way of trade, or any public employment; or where any injury was occasioned to another, by any act done by a servant in pursuance of his master's directions."

State v. Dawson, 2 Bay 360, 1802. Indictment "for trading with a negro, without a ticket from his master or person in whose charge he was, . . it appeared that the defendant kept a small retail store in the

neighbourhood, and that the prosecutor's negro had been seen carrying corn to this store, and delivering it to a clerk, who had the care of the store."

Carpenter, guardian of sundry free negroes, v. Coleman, 2 Bay 436, 1802. "a case in nature of ravishment of ward,[1] in order to try the right of certain negroes to their freedom, . . after the commencement of this action, . . the attorney of the plaintiff, made application to Judge Bay, . . for an order . . to oblige the defendant to enter into a recognisance in the sum of 200 *l.* sterling, . . to produce the negroes at the trial, and in the mean time, to prevent them from being ill treated . . or carried out of the state till the right . . could be determined," [2]

Held: "such order may be made . . [437] at any time during the pendency . . if the guardian . . should suspect" such a course.

Sumpter v. Murrell, 2 Bay 450, 1802. "a family of negroes . . of the value of 175 *l.* sterling, . . given in payment of a land purchase"

Wright v. Gray, 2 Bay 464, 1802. The defendant, "being concerned in a horse race, had persuaded a negro boy belonging to the plaintiff to ride his horse, without the consent of his master. In the course of the race, the horse threw the boy against a tree, and killed him on the spot. . . verdict for the plaintiff to the amount of 450 dollars." "Motion for a new trial. . . that the master . . was present on the course, and saw the boy mount . . did not forbid it. . . [465] Rule for a new trial dismissed."

Coleman ads. Guardian of a free negro named Ben,[3] 2 Bay 485. April 1803. "This case was tried . . in order to try the freedom of the plaintiff's ward . . Ben. . . [486] a record of a judgment from . . Virginia was produced, . . that . . Ben had established his right to his freedom in that state. . . One or two witnesses . . proved, that to the best of their knowledge . . they had seen this negro in Virginia; that he had there passed for a free man; . . the jury found for the plaintiff. . . [487] Rule for new trial discharged."

Maverick v. Stokes, 2 Bay 511, May 1803. Action "to try the freedom of a negro [4] man, named Michael. . . several witnesses . . deposed, that they had known the negro . . at Baltimore, where he had kept a cake and ale house; and also in Wilmington, . . Delaware, where he pursued some other business; and that in both places he appeared to be independent of any master, and conducted himself like a free man. In further support of the plaintiff's case, the following written certificate . . was produced, (to wit.) 'This is to certify . . that Michael, a negro about 5 feet 9 inches high, 21 years of age in August last, has my permission to go about his lawful business; but it is understood that this is not to operate

[1] Act of May 10, 1740, sect. 1 (Grimké's *Public Laws*, 1790, p. 164).
[2] Sect. 2, *ibid.*
[3] See Guardian of Stephen and Benjamin *v.* Coleman, 1 Brevard 232. [233] "The record produced speaks of the plaintiffs as indians; and the wards of plaintiffs here are negroes."
[4] "mulatto," 1 Brevard 272.

as a pass, if ever . . Michael, or Peggy Burton his wife, should return to . . Maryland, but that he shall be liable to be taken up and treated as a slave. Given under my hand at . . Baltimore, this second day of April, 1799. (Signed,) Thomas Rutter.' On the part of the defendant it was proved, that . . Michael did, in violation of the condition in said certificate, return to . . Maryland. . . [514] the jury, contrary to the opinion of the Judge [Grimke], found for the plaintiff."

New trial ordered: "the writing was nothing more than a pass or protection against others who might claim the slave, and did not amount to a dereliction of such slave, or a renunciation of the master's right to him."

Skirving v. Neufville, 2 Desaussure 194, May 1803. [195] "bound himself [in 1796] to pay 2775 *l.* for 37 of the negroes,"

Somers v. Smyth, 2 Desaussure 214, May 1803. [217] "bill . . to set aside deeds from Sam'l. Adams to Mrs. Kelly. Adams made his will . . 1794 [about two months before he died], and on same day executed a bill of sale to Rebecca Kelly, of his stock of cattle, furniture, etc. . . eleven negroes, and deeds . . of his lands . . [221] The complainants were judgment creditors . . The will making dispositions different from the deed" [215] "Caldwell proved . . Rebecca Adams cohabited with [Adams] . . He leased [Adams's plantation] . . at first he applied to R. Kelly, and she referred him to . . Smyth [administrator of Adams]. He paid them both in work . . Smyth sold some of the negroes to Mr. Clarkson. Some were sent off to the Havannah. . . Mr. Mazyck proved that his father had emancipated Rebecca Kelly, and had given her two slaves, and an annuity of 60 *l.* for 10 years. . . She was not industrious, and was extravigant [*sic*]. She might have made 60 *l.* or 70 *l.* per annum; . . Mr. Squib proved that Rebecca Kelly carried on the business of making mattresses extensively. She sometimes sent down 10 or 12 in a week to Charleston for sale. Adams derived more assistance from her than she did from him. . . Adams told witness he was under great obligations to R. Kelly. He would have gone to pieces without her."

Decreed [221] "that the bills of sale and deeds be set aside as voluntary and fraudulent; . . Costs to be paid by defendant Kelly." [James, Ch.]

Bass v. Five Negroes and a Canoe, 2 Fed. Cas. 1006 (Bee 201), July 1803. "It appears that these five negroes had been driven out to sea in a canoe, and that they were picked up by Captain Bass in lat. 33, near the outward edge of the Gulf Stream, and about sixty leagues from land. They were destitute of provisions and water, and, according to the account given by the negroes, had been so for four days. Captain Bass went two or three miles out of his course to take them on board; and supplied them with provisions until he arrived with them in this port, fourteen days after he found them. There was no great risque in rendering this service; but it was very important in its effects, for, without it, these people would, probably have perished. . . They were making, as they say, a West-

India course, and could never have reached land without this, or some similar, assistance. The canoe and negroes may be valued at three thousand dollars. . . Let Captain Bass be paid [one tenth of the property saved] . . and let the owner of the negroes pay the costs, as it appears that they stole the canoe, which is the property of another claimant," [Bee, J.]

Kershaw v. Boykin, 1 Brevard 301, November 1803. "The plaintiffs claimed the negro in question, by virtue of an act of assembly, passed in the year 1802,[1] which recited that a certain James Carey, who joined the enemy in the time of the American revolution, has taken and carried away sundry slaves, the property of Col. Joseph Kershaw; and that two negroes, the property of the said James Carey, were in the possession of Col. Kershaw's representatives: wherefore, the act grants all the right, title, and interest of the State, in and to the said two slaves, to the representatives of the said Col. Kershaw."

Davis v. Davis, 1 Brevard 371, April 1804. Action of trover. "one of the negroes, when a child, being in the arms of the testator's . . daughter, her mother observed ['to certain persons present'], that her daughter ought to have those negroes, . . The father . . answered . . that he had already given them to his daughter." Nonsuit. Set aside, and new trial granted: [372] "This was . . evidence of a delivery . . and accompanied with other circumstances, might be deemed sufficient proof of a prior delivery of all the negroes in dispute."

Mann v. Sacks, 16 Fed. Cas. 637 (Bee 202), April 1804. "The defendant on the 25th of December last, captured on the high seas, and carried into the island of Cuba, the schooner *Ann*, with a cargo of slaves. Sacks at that time commanded a French national brig called *La Sophie*, and was duly commissioned to cruize. When he boarded and took possession of the *Ann*, she was under the command of one Ogden, who called himself a Danish subject, and was reputed owner, to cover the property which, in fact, belonged to Mann and Foltz of this town. The vessel was sailing under a Danish flag; her register and all the papers on board were Danish; and when Sacks boarded, Ogden asked him if the French were at war with the Danes."

Held: "if American citizens will, for the sake of gain, divest themselves of their neutral character, and send their vessels to sea under foreign or masked papers, they do so at their peril. They forfeit all right to the protection of this court and of the treaties intended for the benefit of those who bring themselves fairly within their provisions. . . this vessel had no claim to be considered as American. . . the libel must be dismissed" [Bee, J.]

Graham v. Penman, 1 Brevard 399, May 1804. Trover. "that the negroes . . were included in a settlement made by the plantiff's father on her, in 1782, . . limited to the father for life, . . That afterwards the . . father . . sold the same absolutely . . to the defendant, . . The defendant . . sold . . to another person, . . carried into Georgia,"

[1] 2 Faust 480.

Held: [401] "during the life of the tenant for life, . . there could be no conversion to the prejudice of the plaintiff."

Ramsay v. Deas, 2 Desaussure 233, June 1804. "He bequeathed [1790] his house servants . . [234] to his wife for life,"

Avaunt v. Sweet, 2 Bay 528, 1804.[1] "Sweet, the defendant, who was the father of plaintiff's wife, upon her first marriage with . . Ganey, . . gave her a negro wench named Phoebe, by taking her by the hand and delivering her to his daughter, and at the same time telling her he would give her another girl named Peg; which he some time afterwards sent to her, agreeably to his promise. . . that the father, by some means or other, got Peg back from his daughter, and took her home again to his own house, and by deed of gift conveyed her to his son, . . And this wench remained 10 years in the possession of young Sweet, or his father as his guardian, till after Ganey's death, and her second marriage with the present plaintiff, . . Avaunt, when this suit was brought for recovery of Peg, and her children born in the mean time. It further appeared . . that soon after the defendant, Sweet, got Peg back into his possession, he sent a shawl, and some other articles to his daughter, Mrs. Ganey; . . not presents to Mrs. Ganey, but for Peg's wages."

Held: a good gift, but the plaintiff's right to Peg was barred by the statute of limitations.

Rowe (sheriff) v. State, 2 Bay 565, November 1804. The sheriff "had not paid over the moiety of a fine for killing a negro by undue correction, 25 *l.* sterling to the informer who carried on the prosecution against a defendant, one James Kelly, who had been convicted of the offence. . . The sheriff . . produced the governor's pardon for the whole."

Held: "the governor had no right to intermeddle with the moiety which went to the prosecutor,"

State v. Stroud, 1 Brevard 551, November 1805. The overseer "of the negro, with whom the defendant traded, had secretly permitted the negro to carry corn to the defendant, to deal with him, in order to ascertain whether the defendant would trade with the negro for it, when it did not appear to him, the defendant, that the negro had any permission so to do. It was proved that the defendant did receive from the negro a basket full of corn, for which he promised payment; the overseer being present, but unseen by the defendant. Wilds, J., charged the jury to acquit . . The jury found contrary to the judge's charge."

New trial denied: [552] "the conviction was good, and within the intent of the act." [2]

Dennis v. the Lear, 7 Fed. Cas. 476 (Bee 213), November 1805. The brig was "on a voyage from Cape Francois or Port de Paix, where she had been trading with the revolted negroes,"

Vaughan v. Campbell, 2 Brevard 53, April 1806. "Assumpsit to recover the price paid for a negro, . . without saying any thing relative

[1] April 1803, 1 Brevard 228.
[2] Act of 1796.

to the soundness . . The receipt [for the price of three negroes] was for $1012. . . [54] That plaintiff bought and sold negroes by way of trade or speculation, and would occasionally send negroes he had purchased to stay with [his brother] . . until . . disposed of. . . George was . . swelled when sent . . forty to fifty years of age; unable to work; died soon after. . . at the time . . good negroes sold for four hundred and six hundred dollars, . . George, if . . sound . . would have sold for about three hundred . . The jury found three hundred dollars and interest for plaintiff." Motion for a new trial denied: "a sound price had been given"

Reid v. Delorme, 2 Brevard 76, May 1806. [77] "the defendant had several small negro children, the mother of whom belonged to the plaintiff. That he refused to sell these children to the plaintiff, who was desirous to get them on account of their mother. That these children would frequently come to see their mother, contrary to the consent or knowledge of defendant. That the plaintiff forbade . . but she still received them, unknown to her master. That defendant, finding them absent, . . informed him that the mother harbored them in his kitchen. That plaintiff was vexed, denied . . and refused to let the defendant search . . the defendant applied for a search warrant, and had the kitchen . . searched, where the children were found . . beneath their mother's bed. The defendant then applied to the Attorney General to prosecute . . for harboring his negroes, . . refused, saying he knew Major Reid to be an honest man. The defendant then petitioned the legislature." [76] "setting forth that the Attorney General had . . refused to do his duty, in failing to prosecute Reid . . for harboring or feloniously stealing his negroes." [78] "His petition was treated with contempt by the legislature." Reid brought an action on the case for defamation. Verdict for the the plaintiff.

Judgment thereon, arrested: defendant [79] "was in the exercise of a constitutional right, . . We believe he had no just ground of complaint; but we cannot say that he, himself, knew he had not."

Palmer v. Mikell, 2 Desaussure 342, May 1806. [344] "bequeaths [in 1804] all the [64] negroes [among three nieces and one nephew] . . except 6 new negroes, bequeathed to complainant's son . . [349] Dr. Auld . . went into Mr. Calder's sick room . . [350] then went to see a sick negro,"

Jerby v. 194 slaves saved from the wreck of the brig Swan, 13 Fed. Cas. 550 (Bee 226), May 1806. [551] "The brig *Swan* . . on the 10th instant, early in the morning, got aground at the distance of six miles from the shore of Bull's Island, on this coast. She had on board a cargo of 194 slaves. At nine o'clock . . she was seen by Captain Jerby of the schooner *Victory,* who . . bore down to the vessel, and . . agreed to take the crew and cargo of negroes on board his schooner. . . the business was completely effected by eight o'clock in the evening: on the following morning at ten o'clock they all arrived safe in Charleston. . . The negroes saved have been appraised by order of the court, and are

valued, with the consent of parties, at thirty-eight thousand eight hundred dollars. The service rendered upon this occasion was great, . . and it is hardly possible that the negroes could have been preserved during the night, that succeeded their deliverance; for the waves beat over the brig in such a way that many of them must have been washed overboard. . . The risque, indeed, does not appear to have been great, . . From the nature of the cargo, too, it is evident that the trouble of conveyance from one vessel to the other was little in comparison to that of hoisting goods out of the hold of a vessel, and putting them on board another laying alongside; . . I decree . . one fifth to the libellant" [Bee, J.]

Furman v. Miller, 2 Brevard 127, January 1807. Action "to recover $200 . . paid . . for an African girl, . . [128] that, when the girl was brought first to the plaintiff's house she was sick, had a fever and a cough; that she lived about six weeks, . . was swelled, . . Doct. Ramsay swore that he was called in to attend her, and that she had the dropsy, . . that Africans, when first brought into this country, many of them, are swelled in the extremities for want of exercise;[1] . . The defendant's counsel . . relied chiefly on the circumstance of this being a contract in the course of a peculiar and new branch of traffic, which, from the nature of it, does not admit of an implied warranty; . . The presiding judge, however, charged the jury in favor of the plaintiff, for whom they found. . . Ward, in support of the motion [for a new trial], contended, that as the purchaser had a choice among a great number of slaves, . . he depended on his own judgment, . . that it was a mercantile transaction, and governed by the particular usage of trade ['in regard to the sale of Africans'], which had always been to sell without warranting the quality of the slave, or his soundness of body or mind."

New trial refused: "There was no proof of the usage of this particular trade;"

Fairchild v. Bell, 2 Brevard 129, April 1807. "The plaintiff was a physician, who seeing, not far from his residence, a female negro slave, belonging to the defendant, in the road, in a miserable condition, almost naked, shockingly beaten, and having an iron on her leg of fifteen pounds weight, was induced, from motives of humanity, to take her to his house, where she was carefully attended, clothed, nourished, and cured. The action was to recover the amount of his account for medicine and attendance, expended on that occasion. The defendant avowed the beating, and other ill treatment of the wench; but utterly refused to satisfy the plaintiff for his services, in the care and cure of her. It was clearly proved at the trial, that the defendant had exercised towards the poor slave a continued series of cruelties, and that she must have perished, but for the humane assistance of the plaintiff. When the wench was brought to the plaintiff's, he informed a justice of peace thereof, who advised the plaintiff to keep the negro, and administer relief to her. The defendant was immediately applied to, to furnish the wench with clothes and necessaries, but he refused to do so, was outrageously angry, and threatened

[1] "she was thought to be only a little swelled, from being confined in irons." Head-note.

to sue the plaintiff for harboring his slave. Wilds, J., in charging the jury, told them . . [130] The slave lives for his master's service. His time, his labor, his comforts, are all at his master's disposal. The duty of humane treatment, and of medical assistance, when clearly necessary, ought not to be withholden. That assistance was denied by the master in this case, and denied from the worst of motives. The plaintiff rendered those services, and gave that assistance which the master ought to have procured; and, therefore, ought to be compensated. In a case so circumstanced, the law will imply a contract, from the reason, justice, and necessity, of the case. The jury found for the defendant, contrary to the judge's charge. The motion for a new trial . . was granted . . No one appeared to oppose the motion." Cited in City Council *v.* Cohen, 2 Speers 408 (416): "the defendant had driven off the slave, and had forbidden the plaintiff to receive or assist her."

State v. M'Dowell, 2 Brevard 145, April 1807. "David Burden, a man of color, but born of a free white woman, was offered as a witness . . [146] and was refused . . by the judge who presided. . . it was determined in this court, by all the judges, that any person of color, if the issue of a free white woman, is entitled to give evidence . . in our courts."

Carson v. Bryant, 2 Brevard 159, April 1807. "Action for harboring a negro woman, . . had been stolen from the plaintiff . . had come bona fide into the possession of . . intestate,"

Teasdale v. Insurance Co., 2 Brevard 190, May 1807. [191] "action on a policy of insurance . . on forty negro slaves, valued at two hundred and fifty dollars each, at and from St. Thomas's to Charleston. . . a letter . . to the plaintiff by his captain, dated St. Thomas, 23rd February, . . 'I arrived here on the 20th, twenty-four days from Gambia. . . I came here for the purpose of getting some water, and some repairs'" The sloop was wrecked, and "the cargo and crew . . transferred [to the *Charlotte*] . . arrived safe at Havana on the 17th [of March], . . [192] Widow, Poey and Hermandez [correspondents of the plaintiff, wrote him] that they had received thirty-nine negroes; that only six . . were merchantable. They enclose a declaration made by four gentlemen, well versed in the African business, . . That the subscribers had carefully examined thirty-nine new negroes, consisting of twenty-six males, and thirteen females, landed from the ship *Charlotte*, . . and they were of opinion that only six of them were merchantable; that other six or eight of them might become so, if properly fed and attended to; but that the remainder of them were altogether unsalable, owing to their advanced age, and crippled condition. . . one of the inspectors [testified] . . That the Spaniards do not like old negroes, and consider those old who are but middle aged. That at the time the negroes were sold, it was difficult to procure freight for a vessel bound to Charleston, and only at very extravagant rates, from the dread of being captured by French privateers; and that considering the deplorable condition of the negroes,

humanity dictated a sale of them at Havana. . . thirty-seven sold, three having died,[1] for four thousand six hundred and eighty-five dollars."

Bethune v. Gibson, 2 Brevard 501, May 1807. "the property attached . . was a schooner, the *Doris,* and her cargo, consisting of African slaves. . . [502] arrived in port [Charleston] . . January. . . the master of the *Doris* . . called on the defendants [agents of the owner], at their counting house, to desire them to take charge . . The defendants immediately ordered clothing for the negroes, and fresh provisions. . . [One of them] went on board . . and looked at the cargo; and the next day caused an advertisement to be published in the newspapers, respecting the cargo, as having the disposal thereof."

Webb v. Bellinger, 2 Desaussure 482, May 1807. [487] "inventory was made of the personal estate of . . Webb . . 16th November,1776: . . a full gang of negroes, to wit: two drivers, eight house servants, sixteen tradesmen, fifteen sawyers, and others of all descriptions, amounting in the whole to one hundred and seventy two persons; . . [In February 1789] the negroes . . amounted to one hundred and thirty-two . . whereof there were six tradesmen, two house servants, four sawyers, and two drivers, . . appraised at . . [488] 48,209 *l.* old currency, . . That to account for the diminution of the number . . proof, that a number . . ranaway, or were taken off by the British troops, during the war, and that although some . . returned, a number died of the camp fever, which was introduced [into the plantation] by those who returned; . . [490] Mr. Tunno . . sold [the executor] . . in December, 1785, twenty-eight negro slaves, at 80 *l.* each, . . payable in 1, 2 and 3 years, . . Mr. Josiah Smith testified, that he and Capt. Hutchinson managed the estate of Mr. Austen . . rice and provisions were the objects of culture, from 1764 to 1790. There were at an average, about 40 effective labourers, out of from 67 to 77 slaves on the plantation. They made on an average, 280 barrels of rice per annum, besides their provisions. . . nor did any of them runaway to the British. The estate belonging to persons resident in England, it was protected . . [Counsel for the complainants argued:] [493] That the rice machines [of Webb's estate] . . were allowed to go wholly to ruin, though there were six or seven carpenters among the slaves. This increased the labor of the slaves, made them more feeble, and kept them employed in getting out the crop . . and prevented his improving the lands by their labor, by ditching and banking . . [495] Chancellor James delivered the decree . . [498] it has been proved that the plantation was very much disturbed [in 1779], and that sixty four negroes went away in one night, during . . May, . . a very critical time for the making of a rice crop. . . [1779, 1780, and 1781] were years of general . . calamity, . . in which, all but the particular friends of the British thought themselves fortunate if they could raise provisions, and save their negroes from being carried off; but even

[1] [195] "From the evidence . . there is perhaps as much reason to presume that their death was occasioned in consequence of hardships they had suffered on the voyage from Gambia to St. Thomas's, as that they died in consequence of the misfortunes . . on the voyage from St. Thomas's."

in that many of our citizens entirely failed. . . it would be rigorous to charge defendant [Webb's executor] with negro hire in those three years."

Pringle v. M'Pherson,[1] 2 Desaussure 524, November 1807. Will of General John M'Pherson, dated 1803: [528] "to his son James, one hundred of his negro slaves, to be drawn by lot in families from among those usually residing on the plantation Cotton Hall, and its dependencies; in which number, . . shall be particularly included, the nurse Murriah, and her children, and her sisters and their children, and the drivers, Ben, Cato, and their families." There was added by interlineation: "in addition to the one hundred:"

Held: "their families" is restricted [545] "to the wives and children of . . Ben and Cato, living in the house with them,"

U. S. v. Schooner Kitty, 26 Fed. Cas. 791 (Bee 252), February 1808. "This suit is instituted by Captain McNeil of the revenue cutter *Gallatin,* against the schooner *Kitty,* for a breach of the first and seventh sections of the act of congress passed 2d March last, entitled 'An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States after the 1st of January, 1808.' . . It appeared in evidence, that the *Kitty* sailed from Charleston on the 19th November, 1806, bound to the coast of Africa. She arrived there on the 1st January following, at which time her crew consisted of the captain, two mates, one steward, and seven seamen. The second mate and one seaman died in February; another seaman died in August following. The steward ran away, and the first mate was discharged as an incorrigible drunkard: so that, in . . [792] August, the captain only and five of the crew remained. At this time they had purchased no more than thirty-two slaves; and such was the scarcity of provisions on the coast, that, till the beginning of November, they were threatened with famine. In July, the captain was taken ill, and continued so till the vessel sailed. In August, the ship's papers were seized by the governor, and detained for a fortnight. In September a report of war with Great Britain obliged the vessel to run up the river to avoid being captured. In October, only two of the crew were fit for duty, and the vessel was so leaky as to be three weeks under repair; provisions for their return could not be procured till November; on the 16th of that month she sailed, and on the 16th January, 1808, was seized in Stono Inlet, near Charleston, by the captain of the revenue cutter. . . the voyage was a legal one in its inception, and continued so for nearly fourteen months afterwards. The act by which the trade was made illegal was not passed till a long time after this vessel sailed; and there is no proof that knowledge of it ever reached the captain, till his return. . . If ever there was a case of hardship, occasioned by no fault of the party, this is one; . . the act of congress upon which the suit is grounded expressly gives the court a discretionary power in extreme cases, of which this is surely one. I, therefore, dismiss the suit, but order that all the costs be paid by the claimant; for Captain

[1] See same *v.* same, p. 293, *infra.*

McNeil, in this seizure and prosecution, did no more than obey a positive law, the directions of which he would have been criminal in neglecting." [Bee, J.]

Carey v. Schooner Kitty, 5 Fed. Cas. 59 (Bee 255), April 1808. "a negro slave belonging to the owners [of the schooner] . . ran away from the vessel at Sierra Leone, and remained there. . . [60] entered in the ship's articles as one of the seamen, in the station of cook, deserts from the vessel in a foreign port, and obtains his freedom by the laws of that country. For this loss the owner claims a contribution from the wages of the crew. But I do not see how the general principle of contribution can apply to this case. . . The discipline on board of this vessel appears to have been very relaxed; there seems to have been no watch appointed for the night when this negro made his escape; if there was, no persons are named as having been upon that watch, and it is possible that the negro himself may have been upon that duty. If so, how can blame attach to the others?" [Bee, J.]

Flinn v. Leander and fifty-four Slaves, 9 Fed. Cas. 275 (Bee 260), April 1808. "The brig *Norfolk* on the 19th of March last, 250 miles from this port, to which she was bound, fell in with the *Leander*; and on the afternoon of the third day arrived with her in Charleston. The *Leander* had 56 slaves on board, but no white person. In the evening of the 19th two of the slaves died. . . From her manner of steering, and from a piece of a torn sail which looked like a white flag, she appeared to be in distress. On approaching the vessel, the negroes invited them to come on board, and an interpreter was afterwards found who explained their wish more clearly. Captain Marson then agreed to send on board five hands, with nearly one half of his provisions. The negroes told these men that all the white people had died; but, after their arrival in port, part of a journal was found by which it appeared that the crew had been driven, or thrown, overboard; two had been killed. The negroes said that eight or ten vessels had fallen in with them, without assisting them. That they had been boarded by one, who took away six or seven slaves, under a promise of supplying the rest with provisions; which, however, was not done. It appeared that the *Leander* was tight, and her rigging good, but she had no sails. It was evident from the last entry in the logbook that no reckoning had been kept for a month; from whence it was reasonably inferred that the negroes had been for that time in possession. . . There being no white persons on board, and the slaves being regarded as cargo, I must consider the *Leander* as derelict: but she does not seem to have been in any immediate danger. She was in tight condition, had on deck provisions for eight or ten days, and more in her hold. . . the ship and cargo are worth nearly sixteen thousand dollars. . . adjudge one third of the net proceeds . . by way of compensation." [Bee, J.] "It appeared, in a subsequent proceeding, that the captain and owners of the *Norfolk* had concealed two slaves, part of this cargo; . . The judge . . decreed . . a forfeiture of [their share of salvage] . . to the owners of the *Leander*."

Bickley v. Norris, 2 Brevard 252, November 1808. Jenny and her son were sold for $400 in 1806 "at a sale made by the sheriff . . under a mortgage."

Pringle v. M'Pherson, 2 Brevard 279, January 1809. The will of General John M'Pherson, dated 1803, [280] "gives to his daughter . . seventy of his negro slaves, to be drawn from these [those] usually resident at Laurium, . . to his son . . one hundred of his negroes, to be drawn in families, by lot, and some other negroes particularly named. He then bequeaths to his wife, and two younger children . . all the remainder of his negro slaves, to include part of the domestics, and carpenters, in due proportion. . . [281] One codicil relates to the emancipation of . . Molly."

Tankersley v. Anderson, 4 Desaussure 44, February 1809. [45] "seized the [eight] negroes under the mortgage, and detained them five weeks in goal [*sic*],"

M'Vaughters v. Elder, 2 Brevard 307, April 1809. The intestate [308] "left at his death a female slave, named Bet, and a mare, named Pol Jones, which property, after his death, came into the possession of Margaret M'Grew, . . next of kin, . . the wench had two children, who were born while she was in the possession of Mrs. M'Grew. The mare died while in Mrs. M'Grew's possession, having had three colts during the time of her being in the possession of Mrs. M'Grew, . . [She] died . . without ever having administered . . the plaintiff obtained letters of administration"

Held: [314] "the young of slaves . . stand on the same footing as other animals, . . this increase . . is the product of the intestate's personal estate, which . . are assets to which the administrator has a legal right."

Foster v. Taylor, 2 Brevard 348, November 1809. "The defendant was owner of a machine for cleaning cotton from the seed, for a certain toll. The plaintiff sent a quantity of cotton . . to be cleaned. The defendant worked his machine at night, by the light of a candle in an old lanthorn, under the management of a negro. The gin house, and its contents, were consumed by fire. . . The jury . . stated that the evidence proved a want of ordinary care. The court were unanimously of opinion, that . . [349] the defendant was responsible"

State v. Thornton, 2 Brevard 408, May 1810. "The indictment charged the defendant with trading[1] with a negro slave . . for an iron band . . of a mill shaft, which had been stolen from the mills of M'Ra and Cantey,"

Thompson v. Rogers, 2 Brevard 410, May 1810. "The plaintiff was taken by a pretended writ of *ca. sa.*, and afterwards discharged; but while he was in custody his plantation was broken into in the night time, and the negroes in question taken off."

[1] Act of 1796.

Whitmore v. Casey, 2 Brevard 422, May 1810. A negro slave [423] "was said to be plundered from the Jones' during the revolutionary war, and afterwards came fairly into the possession of General Casey, who sold him to Joshua Whitmore. After the sale . . the slave got, by some means, into the possession of his original owner, the Jones', against whom an action of trover was brought . . verdict for the defendants."

Anderson v. Moncrieff, 3 Desaussure 124, November 1810. "The complainants, . . London Merchants, charge that on the 6th of October, 1799, they consigned by the schooner *Phoebe* . . [125] forty-five Negroes from the Island of Bance, on the coast of Africa, to . . M'Leod [in Charleston], . . [126] 'our friend, Mr. John Tilley, of Bance Island,' . . [128] directed M'Leod, . . [133] 'should it be necessary for your slaves to proceed to the Havana, you will please act with mine as your own.'" [128] "The state law [of December 19, 1796,] prohibited importation of negroes till 1st Jan'ry, 1799: The act of 27th Dec. 1798,[1] continued the above act to the 1st January, 1801."

Held: M'Leod must [135] "account for the nett amount sales of the negroes,"

Rivers v. Rivers, 3 Desaussure 190, January 1811. [191] "the testator's estate consisted of Fifty negroes, valued at $20,300 . . Produce of the plantation for . . 1806, 1807, and 1808, averaging for each year $1,100"

Fraser v. M'Pherson, 3 Desaussure 393, February 1811. [417 n.] "bill of sale . . for fourteen negroes, . . 1790, . . for 678 *l.* 12 *s.* 3 *d.*"

Barber v. Barnes, 2 Brevard 491, April 1811. Action of trespass *vi et armis*. The slave of Barber "had a wife, who was the slave of Mrs. Barnes, . . That the plaintiff's slave sometimes ran away from him, and that he was seen with a pass, which was supposed to be given by . . John Barnes, Mrs. Barnes' young son. . . [492] Mrs. Barnes sent her son to obtain permission from a Mr. Johnson, to draw the seine for shads at his fishery, and for the use of his canoe. This was obtained; and after the hands . . were about to enter on the business, the plaintiff's slave appeared, and . . volunteered his services, without asking a formal license. After he got into the canoe, Mrs. Barnes, who happened to be present, understanding that he could not swim, signified that he had better not go in the canoe; but she soon after went away, and the slave would go in the canoe, as paddler, and by some accident, overset the vessel, in consequence of which, he was drowned. The defendant, John Barnes, was a small lad, and had no control over the slave." Nonsuit.

Bunch v. Hurst, 3 Desaussure 273, June 1811. [274] "1810 . . to make a division among the legatees, the negroes were sold for ten per cent. cash, remainder payable in one year. . . [278] Witness . . employed Bunch as an overseer, for eight or nine months, . . He gave him no more than his victuals and clothes, and never depended on his judg-

[1] 5 St. at L. of S. C. 330.

ment in his planting. He worked ten or eleven negroes." "He thinks him three parts a fool."

Alwyn v. Perkins, 3 Desaussure 297, July 1811. "The complainant, . . a British subject, filed a bill . . for an account . . of the proceeds of a vessel and cargo entrusted to the care of . . [Captain] Perkins, . . an American citizen. . . directed [June 1806] . . to purchase a vessel on . . [complainant's] account, but to take the bill of sale in the name of . . Perkins, 'for reasons of trade not forbidden by the laws of the United States.'[1] . . to proceed . . after accomplishing a prescribed voyage, to . . Charleston, and there to be subject to the . . orders of . . the agent of complainant. . . he . . arrived safe in America, with a large cargo, . . [298] The defendant denied that he was to proceed to Charleston, . . but . . to the best port he thought proper, . . arrived at Savannah . . placed part of the cargo in the hands of . . Kelly for sale, and he himself sold part . . [299] admitted an undisputed balance of $13000 and upwards, due by him to the complainant; . . arbitrators . . in June 1811 . . awarded . . $22397,77, to be due by the defendant. . . [300] sums struck out by the arbitrators . . were for covering commissions, amounting to $3753,67."

Award confirmed: [307] "I cannot sanction the covering British property as American. . . I will not trust my feelings in the expression of invectives against this usage; . . so far from bad usages ripening into law, it is a maxim of justice as well as law, that *malus usus abolendus est.*" [Desaussure, Ch.]

Susan (a free woman of color) v. Wells, 3 Brevard 11, December 1811. "The action was for assault and battery. . . It came out on the cross-examination of the plaintiff's witness that the plaintiff had been a slave, and the witness had heard she was set free by her master. The nonsuit was granted on the ground, that a slave is not entitled to maintain an action, (and here was no proof of manumission,) unless to obtain his freedom, and then he must sue by guardian."

Motion to set aside the nonsuit, rejected: [12] "The plaintiff's own witness proved her to be a slave. . . not pertinent to the issue.[2] Nevertheless it proved the disqualification of the party to sue, and the court was bound to notice it," [Grimke, J.]

Frazer v. Sanders, 3 Brevard 13, December 1811. "that the defendant, and one Bryant, had been in partnership in selling negroes,"

Stone v. Wilson, 3 Brevard 228 (Treadway 68), January 1812. "a permission to keep the negro for three years, at the rate of sixty dollars for the first year, and a hundred dollars for each of the two last years,"

Limehouse v. Gray, 3 Brevard 231 (Treadway 73), January 1812. "The plaintiff produced the advertisement, under which this slave, to-

[1] [309 n.] "the British Parliament had passed an act prohibiting British subjects from supplying foreign ports . . with slaves. Whereas the act of Congress totally prohibiting the slave trade, was not to take effect till the 1st. of January, 1808. The vessel . . arrived in America in October 1807."

[2] "Note. As the evidence was not pertinent . . and was not drawn out by the plaintiff herself, *quere*, whether the court should have permitted it to be drawn out by cross-examination? I rather think it ought not." [Reporter: Judge Brevard.]

gether with several others, was advertised to be sold, all . . described as prime negroes. . . [The vendue-master] declared at the sale, that the purchaser bought subject to every defect excepting that of title;" [235] "that when the wench was put up for sale, she appeared emaciated, that it was visible to the eye of every one, that she was diseased," [231] "The price given was as much as a sound negro of the age, appearance, and qualities, of the one purchased, usually sold for," "A day or two elapsed between the sale . . and her delivery to the plaintiff; during which time she was under the care of a person who usually attended to negroes, and to whom a reasonable compensation for that purpose was paid. When brought to the plaintiff's house, she was sick of a disorder, which a physician, called by the plaintiff, proved was in her system when sold, and was the cause of her death." Verdict for the defendant. New trial denied.

Tucker v. Palmer, 3 Brevard 47, May 1812. "1807, the plaintiff . . brought [the slaves] . . from Virginia, and hired them to the defendant for six months, to serve . . in this State."

Houston v. Gilbert, 3 Brevard 63, May 1812. [64] "that the plaintiff . . gave $500 [for the slave], under an expectation, which was well warranted by the slave's appearance, that he was fully worth that price, when, in fact, he was not worth near so much, being a notorious runaway; and that his bad qualities were concealed from the plaintiff at the time of the sale. . . the jury found . . 'for the plaintiff seven hundred dollars, and that the defendant shall have his negro again, and shall bring him, at his own expence, from Fayetteville, in North Carolina.' . . [68] New trial granted."

Wolff v. Farrell, 3 Brevard 68, May 1812. [73] "The practice of mortgaging or pawning slaves, in this country, is probably as ancient as the introduction of slavery into it. An act of assembly of 1698 . . [74] speaks of mortgages of negroes, . . as in common use at that time."

Bynum v. Bostick, 4 Desaussure 266, June 1812. Joseph Walker made "devises and bequests of real and personal estate, . . to trustees, in trust for his negro slave Betsey, and her three children, . . [267] with directions to set the slaves free according to law, . . the woman and all her children, except one, had been mortgaged by the testator to secure a just debt; and the creditor has since the testator's death enforced his rights . . and sold the woman and her children to pay the debt, . . As to the unmortgaged child, it was sold with its parent, which must have been with the consent of the executors, doubtless to keep the infant with its mother."

Held: "the statute of this state . . expressly forbids any emancipation in any other way than by deed executed in the lifetime of the master,[1] a certain time before his decease, in a prescribed form." [2] "By the

[1] Act of Dec. 20, 1800, sects. 7, 8. 7 St. at L. of S. C. 442, 443.

[2] Judge O'Neall, in Frazier *v.* Frazier, 2 Hill Eq. 304 (315), criticizes Chancellor Desaussure's opinion: "that opinion was certainly prepared . . without looking at the Act. . . not a word said about the deed being executed 'in the lifetime of the master,' or within 'a certain time before his decease.' This shows at once the unsoundness of that decision."

civil law slaves could not take property by descent or purchase; and I apprehend this to be the law in this country. Many cases of beneficent provision for slaves, are allowed to take effect *sub silentio* by the humanity of those interested. But when the law is appealed to, it must take its course." [Desaussure, Ch.]

Stoll v. Ryan, 3 Brevard 238 (Treadway 96), November 1812. [239] " retained Stoll as overseer, and was to allow him one eighth of the crop for his services: "

Robinson v. Culp, 3 Brevard 302 (Treadway 231), November 1812. Held: the civil action for enticing a slave from his master's service is not merged in the felony.

Jones v. Rivers, 3 Brevard 95, December 1812. Action of slander. " 3d count charged, that defendant said of plaintiff, that on pretence of being a Methodist preacher, he inveigled negroes, and took them off, etc. Defendant justified. The jury found for the defendant."

State v. Baldwin, 3 Brevard 309 (Treadway 289), January 1813. [316] " This was an indictment for stealing a negro, tried at Georgetown, at the April term, 1811, . . found guilty. . . It was contended on the part of the prisoner . . that a considerable prejudice had prevailed in Georgetown district, against this offence of negro stealing, insomuch that a portion of the citizens of that district had signed a remonstrance to the governor, against pardoning such offenders,"

Caborne v. Godfrey, 3 Desaussure 514, February 1813. Robert Caborne, in his will, 1808, [515] " desires proper measures to be taken to emancipate the girl Bella."

Brown v. Gilliland, 3 Desaussure 539, February 1813. [544] " purchased at public auction [January 1813] a negro woman and two children for $500; "

Brig Caroline v. U. S., 7 Cranch 496, February 1813. " The libel was . . ' United States . . did cause to be seized . . the *Caroline*, . . loaded, or otherwise prepared, within a port . . of the . . United States, or caused to sail . . for the purpose of carrying on . . traffic in slaves to a foreign country; '[1] . . [498] statement of facts: . . ' that the *Caroline* came into this port [Charleston] equipped like any common merchant vessel, that she did, after her arrival, receive fitments and take on articles calculated for the slave-trade only. . . the Claimant, after receiving information that such equipments were illegal, restored the *Caroline* to the condition in which she was when she entered this port, but that this was not done till after her seizure; and that the wooden parts of the fitments for slaves were marked as they were taken out of the vessel. That in such condition she left Charleston, bound to the Havannah and to no other port. That she arrived at the Havannah on the 28th of June, 1810, and that there she was sold about the 6th of August, 1810, to Spanish subjects who fitted her out for the African slave trade.' " The

[1] Acts of Congress of Mar. 22, 1794, and of Mar. 2, 1807.

circuit court [499] "decreed that the *Caroline* should be condemned as forfeited to the United States." [500] "sentence . . reversed, and the cause remanded . . with directions to admit the libel to be amended." [1]

Goodwin v. Bank, 4 Desaussure 389, April 1813. [390] "indebted . . to Higginson and Greenwood, merchants, of the city of London, . . to secure the said debts, a mortgage of twenty-five negroes was given [1798] . . further security . . mortgaged 48 negro slaves . . [391] April 1802, the 48 negro slaves . . were carried to . . Charleston by the direction of . . Greenwood, to be sold"

Faber v. Baldrick, 3 Brevard 350, May 1813. [352] "family physician . . attended the [negro] wench when sick."

Bailey v. Insurance Co., 3 Brevard 354 (Treadway 381), May 1813. "The second policy was upon fifty negroes, in the schooner *Lucy*," "from Charleston to the Natchez, with liberty of touching at the Havana; . . premium 7 1-2 per cent, amount of policy $1800. The third policy was upon eleven negroes, in the same schooner; . . from Charleston to the Havana, premium 5 per cent." The negroes were the property of citizens of Charleston and of New Orleans. "The *Lucy* . . sailed . . [355] 4th of July, 1806. On the 24th . . she was captured by his Britannic majesty's schooner *Haduck*, Lieut. Foley, who . . sent her into Nassau for adjudication, . . with the exception of the eleven negroes ['condemned as . . lawful prize'] . . acquitted [August 24]. . . The *Lucy*, while lying in the harbor of Nassau, was driven ashore in a violent storm, by which, the vessel and cargo received great injury. . . Many of the negroes in the *Lucy* died; the remainder were sent to New Orleans, . . sold at New Orleans, for 3 or 4000 dollars more than they would have yielded at Nassau; that negroes at Nassau can only be sold for exportation, and then at very low prices; . . entering into bonds in considerable penalties, stipulating that they should be exported. . . [356] $856 60 . . expended . . in clothes and provisions for the negroes whilst at Nassau,"

Taylor v. Mayrant, 4 Desaussure 505, May 1814. [506] "purchasing some slaves for . . an infant, about six years of age,"

Saxon v. Barksdale, 4 Desaussure 522, June 1814. About 1798 [523] "the executor . . pledged . . Dick for . . $200 to Mr. Garret, in whose possession he remained and worked for the use of the said money about 7 or 8 years, at the end of which he sold the . . fellow to Mr. Garret for $416."

Almeida v. Certain Slaves, 1 Fed. Cas. 538 (5 Hughes 55), July 1814. The privateer schooner *Caroline* (Joseph Almeida, captain), during a cruise on the high seas, captured certain slaves, "the property of the king of the United Kingdom of Great Britain and Ireland,"

Held: slaves captured in time of war cannot be libelled as prize, nor will the district court of the United States consider them as prisoners

[1] Note by F. C. Brightly: "The facts . . constituting the offence, not being directly averred,"

of war. They shall be detained in the custody of the marshal; [540] "subject to such disposition . . in favor of the United States . . as shall lawfully be declared," [Drayton, J.]

M'Gill v. Woodward, 3 Brevard 401 (Treadway 468), November 1814. Action "for enticing away and harboring a free woman of color, whom the plaintiff claimed as an indented servant." "The plaintiff purchased her from another person; yet he does not shew that that person had any right, but holds her under her own indenture, and by that indenture, she is bound to serve for fifteen years for her support only." The instrument "describes her to be above eighteen:" "The defendant relies on two grounds of defence. 1st. That the girl was a minor . . 2d. That . . [the indenture] was obtained by fraud . . taking an undue advantage of the situation of the party." The jury found for the defendant. Motion for a new trial refused.

Richardson v. M'Cray, 3 Brevard 404 (Treadway 472), November 1814. "The defendant was the owner of a . . slave, who had committed some crime in Barnwell district; . . arrested at the instance of the plaintiff, . . escaped, and got into Charleston, . . apprehended and committed to the work house. The plaintiff, without any authority . . from the defendant, . . paid the fees for apprehending and dieting this negro, and brought him to Barnwell, where he was tried for the crime . . first charged;"

Held: the defendant is not liable for the expenses paid.

Adam Garden v. Justices (cited in State *v.* Belmont), 4 Strobhart 459, 1814. "Garden moved for a prohibition to a magistrates' court, which was proceeding to try him on a criminal charge; on the ground . . descended from a free Indian woman in amity.[1] Major Garden proved that Adam was born a slave . . of an Indian woman, whom his father owned . . He had brothers and sisters in slavery. . . In 1795, Mr. Lowndes, trustee, sold Adam to . . Smith. Adam and his mother agreed to refund to Mr. Smith the sum he had contracted to pay . . and Mr. Lowndes was requested to execute a deed of manumission. . . sheriff in 1799 . . received from Adam the city capitation tax, which he continued to pay to the time of trial. He had petitioned . . to be exempt, but . . was refused. . . Mrs. Bonneau said . . Indians were permitted to remain on plantations, and were considered free. . . an old woman . . made an affidavit . . That . . she knew Adam, the son of Flora, . . daughter of Rachel, a free born Indian woman . . brought into this State by . . superintendent of Indian affairs, who . . brought her from an Indian nation. . . the Justices and freeholders found Adam Garden to be of free Indian descent, and declined to take cognizance of his offence. A motion was made in the Circuit Court for a mandamus, and . . [460] the motion was refused. . . [460] Adam again had to appeal from the magistrates' jurisdiction, and also his son, . . Their claim was allowed;" [449] "so ruled by Judge Grimke,"

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.

State v. Porter, 3 Brevard 175 (Treadway 694), January 1815. "Amey Lapier had been charged before the defendant [a justice of the peace] and two freeholders under the negro act,[1] . . of having slandered and insulted . . a white woman. . . She was proved to have committed barratry [*sic*], as also an assault." [2] " She was found guilty, and the court sentenced her to pay . . ten dollars, and the costs " The magistrate was indicted for extortion and malpractice in office. [176] " Judge Colcock charged, that no words, however abusive, used by a person of color, whether free, or a slave, would amount to an offence, punishable, by indictment; . . she could only be tried on the matter of complaint set forth in the warrant. . . Verdict, guilty."

New trial granted: " it could only amount to error of judgment."

Ingraham v. Insurance Co., 3 Brevard 522 (Treadway 707), January 1815. " action on a policy of insurance on the ship *Independence* commanded by Captain Churchill, at and from the coast of Africa, for . . [523] four months, beginning . . 18th . . April, . . the ship was blown up, in an insurrection of two hundred and forty slaves on board, in Leango Bay, on the 17th July [1807]." The underwriters had been promised " that the vessel would not go within five hundred miles of Congo, . . knowing that the people of that part of Africa, were much enraged against the captain, and savage-like, would go great lengths to destroy the vessel." [525] " on account of his having taken off some of the free natives of that kingdom, on his last voyage." " after a violent affray . . the Congo men had threatened to cut him off, if ever he came to the coast again." Letter of the supercargo: [524] " The people are, in Congo, much exasperated against Captain Churchill, and if they can get possession of him, I have no doubt would murder him: " The plaintiff suppressed this letter and " represented . . that he had received a letter . . informing him, that the king of Congo was so far from being displeased with the captain's conduct, that he approved of it." Verdict for the defendant. New trial denied.

Fisher v. the Sybil, 9 Fed. Cas. 141 (Brun. Col. Cas. 274), June 1816. [146] " the six colored seamen who belonged to the original crew of the *Sybil,*" had entered into an agreement, after returning to the *Sybil* as volunteers, " to navigate the *Sybil* for twenty-five dollars per month. . . it was not made till they were in a situation in which every seaman feels that he is not a free agent. . . I shall therefore adjudge them entitled to a compensation by way of salvage. But what is to be done with regard to Perry? He is clearly proved to be an absconded slave, and his owner has lost his services for several years. To this I reply, that whatever may have been my decision, had he been at the time hired out for the benefit of his master, since he was in fact a runaway, his master must receive his compensation and not himself. . . [147] to the five free seamen, and to the owner of Perry the slave each one part." [Johnson, J.]

[1] Act of 1740, sects. 10, 14.

[2] [178 n.] " The conviction [of Amey] appears to have been irregular." [Reporter: Judge Brevard.]

De Tollenere v. Fuller, 1 Mill 117, May 1817. "In the year 1808 the plaintiff hired to the defendant a number of negroes, with whom the negro in question had before been associated; the defendant, however, refused to take this negro on hire at any price, in consequence of her being old, and it was finally agreed that she should remain on the plantation . . with the other negroes, for the purpose of cooking and attending the sick, etc. The defendant some time after sent her to Charleston, for the purpose of attending a sick lady. On the 12th of March, 1808, Mr. Patterson, the agent of the plaintiff, met the defendant in Charleston, and informed him that the small pox prevailed in town, and that the negro Catharine had never had it; he also expressed his surprise that the defendant had sent her there . . and warned him to send her back immediately. . . defendant replied, that she should be kept close, and sent back as soon as her services could be dispensed with. . . [118] 18th April . . defendant wrote to Patterson . . 'Notwithstanding my great care, I learn with . . sorrow that Catharine has taken the small pox;'" [117] "that in frequent conversations . . defendant . . spoke of her as having died of the small pox, . . [118] 15th of May he again wrote [Patterson] . . requesting that he would 'order up the negro who had attended Catharine, but to caution him particularly not to bring any of her clothes.' . . she was a 'good old woman, of about fifty or sixty' . . and as a cook and nurse was . . valuable; . . The Jury found a verdict for the plaintiff for 250 dollars." New trial denied.

Pepoon, Guardian of Phebe (a woman of color) v. Clarke, 1 Mill 137, May 1817. "This was an action of trespass, in nature of ravishment of ward, to try the right of the plaintiff's ward (who was held in slavery by the defendant) to her freedom, and to recover damages. . . In 1806, Alexander C. Gibson removed from Baltimore to Charleston, and brought with him the girl Phebe, . . then about twelve years of age. Shortly after . . his wife . . chastised her for having said she was free; and Gibson reproved her for it, saying that she had stated no more than was true, . . that she was the child of a free woman of colour, who lived near him in Baltimore, and that her mother had permitted her to live with them for the purpose of waiting on Mrs. Gibson, without having bound her, or having made any other contract as to the length of time, or the terms on which she was to remain with them, and that without her knowledge . . the girl Phebe had been brought away. . . that he had a great mind to send her back by the vessel which brought them. Gibson died in 1807, and a few days before his death he charged his wife in that event, to send her back to her mother. The present defendant married his widow in the course of the same year, and by this means came to the possession of . . [138] Phebe, and detained her in the character of a slave until the trial of this action, in January, 1816. Mrs. Gibson, before her intermarriage with the defendant, administered on the estate of . . Gibson, but did not include Phebe in the inventory of his estate; her services were proven to have been worth from forty to fifty dollars annually, after paying all the expenses usually incident to her

situation as a slave. The Jury found a verdict establishing her right to freedom, and 400 dollars damages for her wrongful detention in slavery."

Motion for a new trial denied: [141] "So far from thinking that the damages in this case are so excessive as to authorize the granting of a new trial, I cannot forbear to declare my own conviction, that there has been a base attempt to consign to slavery for life, this unfortunate being, whose very situation called loudly for the protection of every feeling and honest man. With this view of the case, I should not have been disposed to grant a new trial, if the damages had been much greater." [Johnson, J.]

Ex parte Ferrett, 1 Mill 194, May 1817. "motion for a prohibition to restrain the enforcement of an ordinance[1] . . imposing a . . poll tax, . . the applicants are natives of Cape Francois, in the island of St. Domingo, and had always enjoyed the rights and privileges of the free citizens of that country; that they have resided in this city for many years, and had never been called on for the above tax until very lately; that their mother was a free woman of the East Indies, and was married to a white man, their father, at the Cape, where her rights had never been questioned."

Held: [195] "The word *Indian* [in the ordinance] means unquestionably slave Indians, for it is a fact (in the history of this country) well known, that the Indians of the country were formerly made slaves; it cannot, then, be extended to the descendants of an East Indian and a white man, nor indeed to the descendants of any other free Indian not impregnated with the blood of the negro." [Colcock, J.]

Murden v. Insurance Co., 1 Mill 200, May 1817. "action . . on a policy of insurance on the brig *Commerce,* R. S. Long, master, . . from Charleston, to the westward coast of Africa; during her stay . . on the coast, and . . back to Charleston. . . added [to the printed form]: 'Warranted not to remain on the coast longer than four months;' 'also warranted free from loss, by reason of any capture, seizure, or detention, . . after the first day of December next;' which policy was executed . . 18th . . June, 1807. The protest of the captain . . stated, 'That . . 16th . . June, 1807, they set sail . . from Charleston . . with sundry goods, . . bound on a slaving voyage . . [201] experienced a heavy tornado" and other storms. They put in first at Senegal and then at Goree, whence the captain wrote, on September 5: [205] "sorry I am to inform you that I have to return, for what I have on board I can get nothing for here. Sir, I have to go to the Gambia, where I am in poor hopes to do much; but there is no alternative, for there is Mr. M'Kelvey's brig come from the leeward, and is in the Gambia; and, from the best information, there is not less than three hundred sail on the coast. The rum, tobacco, dry-goods, and powder, I shall part with in the Gambia, and the remainder I have to proceed to Senegal with. But I have little hopes of getting

[1] [195] "That . . every other free . . person of colour, whether a descendant of an Indian or otherwise, shall, etc."

home in time, and therefore I hope you will not neglect of putting a letter on board of every pilot boat to inform me how to proceed, for it will not do to make a sacrifice at present, if I am obliged to do so hereafter. The greatest offer that I have had is, fifty slaves for the whole that I have on board, say every thing that came out in her. And, sir, I must strive to make a saving voyage, if I can't do no better. Do be particular with your letters, for I will not come in sight of the bar, if it please God that I get off the coast," The "protest of the captain" stated further that the vessel [203] "proceeded to the river Gambia, . . 17th of [September] . . came to anchor abreast of Gillfree, in the said river. That on the 19th, when paying customs, a difference took place between the king's people and the crew of the said brig, which occasioned most of the said crew to jump overboard, when the cook was unfortunately drowned. That after this day commenced their trade, and continued trading without any material circumstance happening, except the loss of another man, and the crew generally in bad health, and not able to do duty. . . [204] 29th . . December . . proceeded on the voyage to return . . having on board . . belonging to the owners of said brig, eighty-three slaves, besides three privilege slaves. That having lost three men of their crew, and no others to be procured . . they were obliged to leave the coast of Africa with that number of hands short . . and considerably deficient in the article of bread for the use of the crew, it being impossible to procure any in that part of the coast . . 11th day of February [1808], . . finding no more than one third of a barrel of bread remained on board for the use of the crew, . . nine in number, many of whom, from sickness, were entirely unfit for hard . . duty; and the said brig being leaky in her upperworks, a consultation was held . . [205] it was concluded to be dangerous . . to venture on the American coast at that season of the year, and that it would be best, for the general interest of the owners of vessel and cargo, as well as for the preservation of the lives of the crew, to bear away for the first port; but being informed of the attack on the *Chesapeake,* and of other reports while on the coast of Africa, they supposed war had taken place between Great Britain and the United States; they therefore judged it more prudent . . to proceed to Matanzas, in the island of Cuba, than to put into Nassau; and they directed their course accordingly." "But unfortunately running too near the shore in the night, the vessel grounded and was lost." Verdict for the plaintiff.

New trial granted: the captain thought it [213] "more prudent and safe [to pass by Nassau, the nearest port, and] to proceed to Matanzas, that haven of safety, into which it appears that most of the vessels engaged in the African trade were blown at that time. But no words or arguments can disguise the real motives for the departure in this case. The vessel had unfortunately been detained on the coast of Africa, until it became impossible for her to return before the prohibitory act of Congress took effect. It became necessary, therefore, to look out for another port. Matanzas furnished the best prospect, perhaps, of disposing of the cargo to advantage. . . The apprehension of a war between the United States and Great Britain was a groundless pretext." [Nott, J.]

Hendrickson v. Miller, 1 Mill 296, May 1817. [298] "a warrant to seize the servant . . who had taken refuge after the death of her master with the defendant,"

Chanet v. Parker, 1 Mill 333, May 1817. "negroes . . forcibly taken . . from the plaintiff's plantation . . under pretence . . of a mortgage"

Smith v. Ehrick, 1 Mill 349, May 1817. "In 1807 or 1808, Watson . . consigned to the house of Christian and De Wolf, a cargo of Africans, 14 of whom they sold to . . Whalley, at 8280 dollars, with whom they had a running account, and to whom they also sold 10 other negroes, of a consignment from another person. . . Whalley failed in England;"

Mitchell v. Dubose, 1 Mill 360, May 1817. "sold . . the wench . . to the plaintiff, . . February, 1810, . . for . . two hundred and thirty dollars; . . plaintiff kept [her] . . upwards of a year . . then sent her down to a Mr. Croft, in Charleston, for sale, . . [361] [He] said she was upwards of fifty years of age, . . 'a crazy sort of a thing,' who had kept him in apprehensions of having his house burnt . . but . . appeared to be a healthy woman."

Penning v. Porter, 1 Mill 396, May 1817. Held: [397] "the owners of slaves, convicted of offences, are not liable for the costs of prosecution,"

Course v. Prince, 1 Mill 413, May 1817. In 1807 three negroes were bought for the work of a ferry.

State v. Greenwood, 1 Mill 420, May 1817. "two indictments . . for assaults and false imprisonment. . . confessions voluntarily made by the defendant, . . [He] fabricated a charge against [two free colored men,] . . whom he knew to be free, and procured a warrant of commitment from Justice Nobbs, and confined them in gaol, where they were kept, until they consented to indenture themselves to . . Hasket, who pretended that he would befriend them, by paying seventy or eighty dollars to defray the expenses of the prosecution against them, and as an accommodation of the sham accusation, they were then, by the order of the same Justice, released from prison, and brought before him, where they executed indentures to Hasket, who then took charge of them, and they shortly after disappeared, and have never since been heard of, notwithstanding the officers of the Charleston police have made the most diligent inquiry. The defendant, who was a constable, also acknowledged that he did the act, for the purpose of making money of them, and exulted that he was in no danger, as they had been sent off, where their complaints could not be heard; supposing that their presence was indispensably necessary to his conviction." He was found guilty.

New trial refused: [422] "the charge against these men was founded in the basest falsehood, fabricated by the defendant, for the nefarious purpose of enslaving them for life, in which it is feared he has been but too successful, with a view, to use his own language, 'to make money of them.'" [Johnson, J.]

Dubois v. Read, 1 Mill 472, May 1817. In helping to build a house, "the negro . . was worth 50 cents per day."

Lowry v. M'Burney, 1 Mill 237, June 1817. "Debt on bond . . given for a negro carpenter, . . that this negro had been the property of a Mr. Croft . . and that, when young, had been put out as an apprentice for three years to learn the trade of a carpenter; that after his term had expired, he had misbehaved, and was sold by Mr. Croft to Mr. Fickling, . . who afterwards sold him to Mr. Miller, a carpenter, in whose employ he remained till the day of Miller's death; that for several years he had behaved very well . . and was constantly employed at his trade during that time; that after Miller's death he was advertised and sold by his executor, Mr. Lowry; . . he was represented as a good plantation carpenter, and was purchased by Dr. M'Burney, for . . 1007 dollars; . . [238] that Mr. Miller . . got the same wages for him as for his white journeymen, . . For defendant one or two witnesses swore that after Dr. M'Burney took him to Jacksonborough, he turned out a drunkard, a runaway; and that he was not a good workman; and that he had there been concerned in breaking open a poultry house. . . urged by plaintiff that no man could warrant the *future conduct* of a negro . . That a negro, with proper treatment and good management, might behave very well to one man, while on the contrary he might behave very much amiss to another master. A difference of treatment, bad company, and the temptations of a village where drunkenness and intoxication prevail, and vicious habits are predominant, might seduce even the best of slaves to go astray." Verdict for the plaintiff. New trial denied.

Murden v. Beath, 1 Mill 244, June 1817. "the plaintiff being indebted to the defendants . . $2375 34, (for moneys paid by them to the United States as sureties on his bond,) gave to them his bond . . confessed judgment [December 12, 1807] . . and a *fi. fa.* was issued . . under which some slaves belonging to the plaintiff, and which had been imported by Captain Hubbel, being seized, Mr. Jones paid . . Sheriff, on 22d January, 1808, . . $2668 25, . . the slaves were released . . [245] Hubbel . . had a charge of $450 for freight of said slaves, . . [246] $1542 56 was . . received [January 28, 1808, by Mitchell, agent of the defendants,] from Messrs. Ascaratti and Son, at the Havannah, as the proceeds of . . [ten] slaves deposited in their hands by . . Cole, master of the sloop *Deborah,* from Africa, and sold by his order on account of the plaintiff; . . [247] Mitchell had also received, on the 10th February, 1808, the sum of $770, 3¼ royals, not $800, from Josey Gromez, as the proceeds of the sale of five slaves put into his hands by Captain Holden, of the *Mercury,* for sale on account of said plaintiff, . . also received from Captain Long, of ——,[1] an order on Messrs. Madau and Co. of Matanzas, $966 38 . . paid . . 8th March, 1808, out of funds arising from certain slaves brought to the Matanzas by . . Captain Long, on account of . . plaintiff, and there sold"

Johnson v. Packer, 1 N. and McC. 1, November 1817. "action of Trespass, *vi et armis,* . . [2] Grice by deed conveyed to his . . [twin]

[1] The brig *Commerce*? See Murden *v.* Insurance Co., p. 302, *supra.* Evidently the cargo was not all lost with the vessel.

grand sons, . . while they were infants, two negro girls. . . that . . Johnson . . should have the possession . . until . . grand children . . should arrive at twenty-one . . Johnson took possession of the negroes when they were very young, and kept them until . . thirteen or fourteen years of age, . . suffered them to go into . . [the twins'] possession, for the purpose of assisting them in making a crop, . . they sold . . the negroes to the plaintiff [Packer], their brother-in-law, . . and immediately after left the country, without having made provision for the payment of . . the debt of the defendant Johnson. The defendants . . entered the plaintiff's house armed, and . . forcibly carried the negroes off. . . worth from $800 to $1000. . . verdict for the plaintiff for $1500, to be released on the return of the negroes, and the payment of $150."

State v. E. and R. Smith, 1 N. and McC. 13, November 1817. "convicted . . for killing a negro in *heat* and *passion*.[1] . . sentence . . 'that they [each] pay three hundred and fifty pounds old currency.'"

Messonier v. Insurance Co., 1 N. and McC. 155, January 1818. [156] "action on two policies . . dated the 13th and 15th September, 1810, . . on the Spanish brig *San Carlos* and her cargo; . . valuing the return cargo, viz: each slave at $150, . . insured to sail from Teneriffe to the coast of Africa, and during her stay and trade there for four months, and from thence to the Havanna." The brig "sailed on the 10th day of June, 1810, from Santa Cruz, in the Island of Teneriffe, laden with tobacco, rum, India goods, planks, muskets, etc. the property of Thomas Armstrong, a native and resident of the said Island for the coast of Africa. . . [157] captured" by the British [168] "on the ground, that she was an American vessel under Spanish Colours, [[157] 'carried into Sierra Leone,'] and was acquitted, because that was not proven." The supercargo said [157] "that the vessel was saved [from condemnation] by his management, in procuring a separate Bill of Lading for the water casks, which furnished a strong ground of suspicion, as to the object of her voyage. . . [158] eleven Spanish seamen . . went off, . . he then procured a crew (all Americans,[2] but two,) . . abandoning the slave voyage altogether. . . [The plaintiff] proved, that seventeen and a half per cent. was the highest premium paid in August, 1810, and that in consequence of the zeal and activity of the British, to prevent the slave trade, it rose in the December following, to thirty-five per cent."

Held: [170] "the plaintiff is entitled to a recovery for a partial loss,"

Touro v. Cassin, 1 N. and McC. 173, January 1818. Promissory notes had been given [174] "as premiums on policies of insurance [[175] 'executed in Boston, by citizens of Boston,'] . . on slaving voyages from Africa to Charleston, or elsewhere, in 1803, which, by the laws of Massachusetts,[3] were declared void,"

[1] Act of 1740, sect. 37. P. L. 173; 2 Brev. Dig. 241.

[2] [167] "seven put on board." [163] "who had been taken on board vessels engaged in the slave trade," [157] "having been brought into the colony on board of prizes, were considered as prisoners, and were, by the Governor's orders, put on . . the . . *San Carlos,* to be conveyed out of . . Sierra Leone"

[3] Mass. act of 1788.

Held: the notes are void. [176] "The citizens of that state . . are prohibited . . from engaging in a traffic which almost the whole civilized world now unite in denouncing nefarious." [Johnson, J.]

Witsell v. Earnest, 1 N. and McC. 182, January 1818. "The defendants, who were in the service of Dr. Glover, proceeded from his plantation to Mrs. E. Witsell's, for the purpose of hunting runaway negroes. They loaded their guns with buck shot, and on approaching the house, they separated, so as to command the back of the house. A negro who was in or near the house, on their approach, jumped up, and ran off towards a swamp, which was at no great distance. The defendants fired at the same instant, and killed the negro. . . The country had been in a state of alarm in consequence of the depredations of runaway negroes, and a murder had been committed at no great distance from this place, some time previously to this."

Held: [184] "The killing, . . not being justified by the statute or Common Law, the plaintiff is entitled to compensation."

King ads. Wood, 1 N. and McC. 184, January 1818. "action of slander, for calling plaintiff's wife a *Mulatto*. . . no special damages laid in the declaration." Held: the words are actionable *per se.*

Byers v. Bostwick, 2 Mill 75, May 1818. "alleged that defendant had sold . . a negro, as a fellow that would not run away, but who, contrary to such representation, . . had run away."

Quay v. McNinch, 2 Mill 78, May 1818. "This negro had left the service of his master, in . . New-Jersey, and gone to Philadelphia, where he assumed the character of a free man, and had been reputed and treated as such for several years. The defendant being in Philadelphia, and having occasion for a coachman to drive him to his . . residence in South Carolina, this fellow tendered his services. He was then engaged in the service of a gentleman as a hackney coachman. Upon inquiry, the defendant was informed that he was a faithful fellow, and a good driver; and he therefore accepted of his offer. Shortly after his arrival in Chester District, . . the negro was taken up as a slave, who had run away from his master."

Mathews v. Sims, 2 Mill 103, May 1818. In 1810 Sims sold Mathews "three negroes, one a fellow called Sawney, and two females, Annetta and Anaca. Sawney was valued at 450 dollars, and Annetta at 350," Sims warranted "all . . to be good and sound," but it turned out "that two of the negroes were not good, but . . were habitual thieves; that one of the two was a runaway, . . [104] evidence that Sawney, soon after the purchase, discovered himself to be a runaway and thief; that his temper was malicious and vindictive, and withal that he had been castrated before his being brought from Virginia into this state. . . that Annetta had been cruelly murdered . . and that Sawney had been suspected as the author of this murder. . . had been tried before a magistrate and freeholders, and . . acquitted."

Held: [108] "As to the damages . . the price paid for Sawney, with interest . . (provided his services had been of no value,) and all accruing costs, would constitute the utmost limit:"

Whitmore v. Rumple, 2 Mill 120, May 1818. "The Sheriff showed . . a bill . . charging 25 cents per day for dieting negroes, and 50 cents per day for keeping and feeding horses, taken in execution," [121] "the act of February 1791,[1] . . allows only 8 *d* for dieting negroes or other slaves; but the act of 1808 [1810][2] provides, that for each negro *confined and dieted* in any gaol . . 25 cents per diem shall be allowed . . it does not appear whether the negroes . . were . . *confined*"

State v. Wilson, 2 Mill 135, May 1818. Indictment of Wilson and Strange for swindling, by selling "a certain mulatto girl, aged about nine years," who was free.

Held: [139] "if colour was a universal badge of slavery, the facts admitted . . might amount to cheating, but everyone knows that there are persons of this colour that are free, and that among the subjects of slavery are found all the various shades of colour between the European and African." [Johnson, J.]

Davis v. Murray, 2 Mill 143, May 1818. "that the negro, at the time of sale, was afflicted with the dropsy, . . the defendant used every artifice in his power to conceal his true situation,"

Benson v. Littlefield, 2 Mill 180, May 1818. "before he purchased him [for $200] . . defendant had hired him to grub; . . a competent hand, though slow, being old, except when he had the cholic."

Arthur v. Wells, 2 Mill 314, May 1818. "Trespass for killing a negro. It appeared that the unfortunate subject of this suit ran off on the morning of the day on which he was killed, from his overseer, who was about to correct him; . . the defendant . . ordered him to stop; he, however, disregarded the command, and continued to run off from the defendant, until he reached the adjoining plantation, where he endeavoured to conceal himself under a fence, among some brushes, where he was shot by the defendant. . . [315] not . . more than ten feet from the negro" Verdict for the plaintiff.

New trial denied: [316] "It is clear, beyond doubt, that the act was intentional; and it gives me pleasure to declare, that the act is not authorized by any law of the state. The law does not authorize the killing of a negro, except in cases where the person, attempting to take one, is endangered by actual resistance, as by assaulting or striking." [Colcock, J.]

Gregg v. Thompson, 2 Mill 331, May 1818. Action to recover money due on "a promissory note, payable to the plaintiff's negro slave, Joe,"

Held: [332] "the contract . . is *ipso facto* void, . . [333] The slave cannot endorse the note, nor can he empower his master to sue for him."

[1] 1 Brev. Dig. 344.
[2] Act of 1810. 2 Brev. Dig. 227.

Collin v. Green, 2 Mill 346, May 1818. Green "devised a negro, named Frank, to his wife, for life; that when his son Frederick, the defendant, arrived at the age of sixteen, both he and Frank should be put apprentices to a bricklayer; and afterwards he bequeaths the negro, Frank, to the defendant, and his heirs for ever."

Crawford v. Wilson, 2 Mill 353, May 1818. "warranted the girl to be sound, except as to a cast in her eye, and a split . . in her lip. . . bill of sale [added:] and the consequences thereof. . . the girl . . broke out all over in ulcers, . . incurable, . . plaintiff returned the girl . . The jury found for the plaintiff."

Hobson v. Humphries, 2 Mill 371, May 1818. "action . . to recover 100 dollars, which . . defendant had promised . . if [plaintiff] . . would ride out and show him where a certain family of negroes was, . . The defendant replied in evidence, that when the plaintiff offered to show these negroes . . the defendant said, he had heard of a family . . in Newberry answering this description, . . that plaintiff replied . . that the family inquired of by defendant were more than 100 miles distant, and that if defendant would not give him that sum, he knew a man that would, . . That afterwards the plaintiff came . . for the purpose of going to show the negroes, which he then stated were in Newberry, . . proved to be the same which defendant had discovered before: . . therefore, refused to go . . or to pay . . the 100 dollars."

Caldwell v. Barkley, 2 Mill 452, May 1818. In 1814 the defendant gave a lame negro which [454] "sold [later] . . for 387 dollars," in exchange for a negro, warranted as sound. Dr. Kelly in 1815 [453] "found . . his eyes . . affected with . . a milky cataract; and that hard labour, and labouring in the sun . . might . . destroy his sight . . Martin . . had worked on shares with the defendant in the crop of 1815; . . that the defendant did . . request him not to push this negro too hard because of his eyes; . . never put him to close work. He was employed in chopping and ploughing. . . a tender of 487 dollars . . with an offer to take back the negro, . . [454] refused" [452] "if perfectly sound, he was worth 600 dollars."

Mathis v. Clark, 2 Mill 456, May 1818. "the negro for which the note [for $500] was given, had run away;"

Eastland v. Longshorn, 1 N. and McC. 194, May 1818. The mother "was diseased of the dropsy at the time of the sale, and that she afterwards died of that disease, and that the defendants had expended $51 in employing a physician to attend her. . . [195] that the child was estimated to be worth two hundred dollars,"

Teague v. Maxwell, 1 N. and McC. 200, May 1818. "trover, to recover the value of a negro child," The plaintiff "had recovered of the defendant, the value of a negro woman (mother of this child;) pending which action the child in question was born. The Presiding Judge deeming . . [that] existing circumstances . . precluded the idea of separate identity between the mother and this child, directed a non-suit,"

Set aside: "That the child . . constituted no part of the former suit. That the identity of the child is to be considered separate . . from that of the mother. The right of property whereof is still in the plaintiff."

Neel ads. Deens, 1 N. and McC. 210, May 1818. "action . . to recover . . five hundred and fifty dollars . . paid by . . an elderly widow lady, to . . dealers and traders in negroes, for a negro girl . . [A witness] [212] described . . the girl, a few days before her death, as appearing bloated . . [Another] said she was smart and lively [before the sale], and was singled out to bring water on that account." Verdict of the jury: "amount of the consideration money paid, with interest, and one hundred dollars damages" [213] "by way of 'smart-money,'" New trial ordered, unless the plaintiff will release the "smart-money."

M'Dowell ads. Murdock, 1 N. and McC. 237, May 1818. "a few hours before her death . . asked where her negroes were? . . informed . . they were present . . She said, 'I want you to take them, and treat them well.'"

Welborn v. Little, 1 N. and McC. 263, November 1818. Garrison, who had bought from the plaintiff the unexpired term of a white apprentice, "set out on his way home [to Kentucky], and one of the Commissioners [of the Poor], who lived in the neighborhood, and who had an agency in binding him to the defendant, on hearing of it, and suspecting from the character of the parties, and from the colour of the boy, (which was very dark,) that foul dealing with him was intended, issued a process of his own manufacturing, (the legality of which, it is not necessary to consider, as it answered the purpose for which it was intended, and perhaps subserved the cause of justice and humanity,) authorizing a constable to pursue Garrison, and bring the boy back; the constable did so, and . . [265] the Commissioner retained the possession of the apprentice, . . stated that . . he . . should never have interfered if the plaintiff had not, as he believed, disposed of him in such a manner as might subject him to perpetual slavery."

Bell ads. Graham, 1 N. and McC. 278, November 1818. An action for malicious prosecution against a Methodist class leader. "Some years ago, a Methodist Society had established a church at Shady Grove . . they had . . regular meetings . . numerously attended by the black population of the neighbourhood, as well as the white. For some time preceding the occurrence which gave rise to this action, the patrol, or persons assuming that character, had frequently come . . [279] on the days of worship, for the purpose of exercising their office on the slaves that were without passes, and on some occasions, conducted themselves in such a manner as to produce the greatest disturbance . . during public worship; in consequence of which the regular travelling preachers had refused to attend it, and it was left in the charge of the defendant, the class leader, who continued the regular meetings. At one of these meetings [[282] 'in the midst of day'], the plaintiff, . . then acting under regular authority from the captain of the militia, within whose beat the meeting house was situated, came with a party of three or four . . in

the time of service, some or all of them having hickory switches, the usual instruments with which they executed their commission. On their approach, the blacks began to seek their safety by flight—they caught and whipt one, at a little distance from the meeting house. They also caught several others near the house, whom they threatened, and were preparing to whip, but dismissed, on the entreaties of the defendant and the tears of a lady who interceded for them. It was impossible to ascertain from the evidence, whether the congregation, which consisted of thirty or forty persons, were constituted of a majority of blacks or whites.[1] . . The defendant, . . being urged to it by many of the most respectable members of the congregation, reluctantly consented to become the informer, . . [280] An indictment was preferred against the plaintiff . . but the Grand Jury rejected the bill, and he therefore brought this action. The Jury, contrary to . . express charge of the Presiding Judge, found a verdict for the plaintiff, for $56 25," All the justices concurred in granting the motion for a new trial.

Kid v. Mitchell, 1 N. and McC. 334, November 1818. [336] "this negro [man] was worth about $500 when he was sold [in 1813];—now [1818] worth eight or $900."

Drayton ads. Wells, 1 N. and McC. 409, January 1819. "that the plaintiff should serve . . as an overseer . . for . . 1809; and that the defendant . . should pay him the value of three hands in the crop, for his personal services, and three like shares for three negroes belonging to the plaintiff, who were to labour in the crop. . . [410] The plaintiff . . proved the value of a share to be $120." Verdict for the plaintiff.

Alston ads. Bowers, 1 N. and McC. 458, January 1819. "the Deputy Sheriff . . put the copy writ, in the piazza of the defendant's dwelling house; into the hands of one of the domestics, (a negro) of the defendant:" The negro delivered it to the overseer of the defendant.

Held: [459] "It was not the less a leaving at an obvious part of the house, because it was put into the hands of a *moral agent*, instead of being thrown on the floor, to be carried whithersoever the next puff of wind should have wafted it. . . [460] if the white agent had been as faithful as the black one, the process would, no doubt, have regularly reached the hands of the defendant." [Cheves, J.]

Ex parte Leland, 1 N. and McC. 460, January 1819. [462] "The word 'negroes' has a fixed meaning (slaves.)"

Reid v. Colcock, 1 N. and McC. 592. April 1819. [593] "that on one occasion, some person . . asked Frank, then a boy, to whom he belonged, and on his replying that he did not know, . . [plaintiff's father] gave him a severe chastisement, saying to him, he belonged to plaintiff, and desired that he might remember it for the future. . . said . . the witness's driver, was no planter, . . [594] had bought Arthur, as a body servant for the plaintiff, . . that on the plaintiff's coming home, on a visit, while at college, the negro Billy was called out of the field,

[1] Act of 1803. 2 Brev. Dig. 260, sect. 126.

by plaintiff's father, and given to him; and that on that occasion, and frequently after, when plaintiff was at home, Billy left his work in the field, and attended his person; . . Doll . . was taken into the house . . by his mother, to be made a seamstress for his use;"

State v. Miles, 2 N. and McC. 1, May 1819. "the owner . . lived in Williamsburgh district. [He had lent the negro to his brother.] . . The negro . . was taken, or absconded. . . found in Charleston, where he had been sold by the prisoner. . . [2] tried there [on an indictment for inveigling, stealing and carrying away a negro from his owner] . . convicted,"

New trial refused: [3] "The object . . of the act[1] was to give the most ample protection to the most valuable species of personal property, owned in this country; . . [4] the law implies a loss of service.—Whether it be on Sunday, when every slave is exempt from labour, or on a holiday, when his labour is voluntarily dispensed with by the owner, or in the night, when he does not require his services, or when he has run away, and he cannot command them, is perfectly immaterial." [Nott, J.]

M'Kewn ads. Barksdale, 2 N. and McC. 17, May 1819. Action "for the wages of a black bricklayer, the property of Mrs. Barksdale, and employed [36 days] by the defendant. . . It was proved by a multitude of mechanics, that when slaves were hired by the day, they received larger wages than by the month; as $1 per day, and about $16 per month. But, that, for this *extra.* compensation, they must actually labour during working hours: And if the weather was inclement, or if, from any cause, time was lost, it was deducted:"

Cook v. Gourdin, 2 N. and McC. 19, May 1819. The "patroon" of the ferry boat [20] "instead of exerting himself, in order to bring the head of the flat up, to stem the current again, left his pole and went to the stern of the flat, to chastise the helmsman; and did beat him for his inattention and carelessness. In the mean time, the current took the broadside of the flat and . . the hands threw down their oars and poles, and refused to make any further exertions."

State v. Anone, 2 N. and McC. 27, May 1819. Polydore, Anone's slave, [28] "had been long employed in the store, . . the defendant had, several different times, employed a white clerk. . . had said to the white clerk, that a ticket[2] was of no consequence;" [31] "While [the clerk] . . was sick, Polydore had the whole management. Anone directed the witness [the clerk] to buy all the corn he could, and if the negroes brought 10,000 bushels to buy it. The witness remonstrated; to which defendant said he was not fit to do business. Polydore was there, and bought corn without tickets. The witness wrote several letters informing defendant, that the negroes brought so much corn, that they must have stolen it." An overseer gave corn to a slave and [28] "sent him to the store for the purpose of detecting" Anone in trading illegally.

[1] 2 Brev. Dig. 245.
[2] Act of December 1817.

He saw Polydore receive the corn from the negro without a ticket, and give him " some articles out of the store in return. . . the Judge charged, that there was sufficient evidence to justify the inference, that Anone had instructed Polydore to trade with negroes, without tickets. The Jury found him guilty."

Motion for a new trial [34] " unanimously dismissed." I. [30] " standing by for the purpose of detecting an offender, who may trade with the slave, does not legalize the trading. . . this mean[s] of detecting . . is becoming common; and being prudently practiced, may be rendered very efficacious. . . [II.] [33] whenever a master makes a slave the minister of his crime, we can look for testimony only from his character and conduct, the object in view . . and attending circumstances." [Richardson, J.]

Hogg v. Keller, 2 N. and McC. 113, November 1819. " Keller, styling himself captain of a patrol, and the other defendants acting under his authority, did whip the plaintiff's negro, who had a pass from his master. The number of stripes was not many, nor were they severely laid on. The defendant attempted to justify, under the patrol law; and on the ground that the pass was not according to law; because it did not state to what place the negro was going. One of the witnesses said, each one gave some stripes, and that this was the usual mode of whipping by patrols."

Held: the pass need not state " to what place the negro shall be permitted to go. It is sufficient if it express a leave of absence, for such a time." [1]

State v. Turnage, 2 N. and McC. 158, November 1819. " the act on which the prisoner was indicted [for stealing a negro] was . . an act . . of the General Assembly of the province of South-Carolina, . . passed in 1754," He was convicted.

State v. Whyte, 2 N. and McC. 174, November 1819. [175] " a motion at Chambers, before Mr. Justice Johnson, for a prohibition against the magistrates and freeholders,[2] who had tried and convicted a negro man slave, . . Billy, the property of Hugh Hershaw. . . The evidence was, that the prisoner had been several times at the house of the owner of Hannah; that he had endeavoured to induce another negro woman to go off with him, saying that his young master would carry her to a free country, that she declined, and then he made the same propositions to . . Hannah, who consented. And he fixed on Saturday as the time when he would come for her; that on her suggesting a difficulty in getting off her clothes, he had promised to bring a horse. That while she was at work in her mistresses [*sic*] house on Saturday night, some person was heard to come to the door and make a noise, . . Hannah went out, and has never been since seen or heard of by her owner. One of the witnesses said she had a glimpse of his face, and thought it was Billy, from his having made the bargain to come for Hannah on that night. Some evi-

[1] 2 Brev. Dig. 231.
[2] Act of 1740. 1 Brev. Dig. 463.

dence was then offered as to the character of the prisoner; but it was rather a negative character; upon which, after hearing counsel in behalf of the accused, the Court found the prisoner guilty and pronounced upon him the sentence of death. . . [176] This motion [for a prohibition] was refused, and notice was given of an appeal. A motion was made [before the Constitutional Court] to reverse the decision"

Refused: negroes are included under the general words, "person or persons," used in the act of 1754. See Billy *ads.* State, *infra.*

Gayle v. Cunningham, Harper Eq. 124, December 1819. Held, by a divided court: the issue of a female slave, born after the execution of a will and before the death of the testator, shall go with the mother to the legatee of said slave. [128] "the legatee . . risks every consequence of breeding, . . Those who incur the *risk* are reasonably entitled to the *gain.* . . contrary decision would separate even sucking infants; . . [129] Sound policy, as well as humanity, requires that everything should be done to reconcile these unhappy beings to their lot, by keeping mothers and children together." [De Saussure, Ch.]

State v. Fisher, 2 N. and McC. 261, January 1820. "they stopped to water their horses . . a negro came out of the yard . . and demanded the bucket . . (which was their own) for the purpose . . of watering his horse. . . refused . . and some words ensued,"

Johnson v. Brailsford, 2 N. and McC. 273, January 1820. By his will, executed in 1808, a blacksmith of Charleston disposed of a large estate, directing his executors to sell certain land and his [274] "negro blacksmiths, and such other town negroes as are supernumeraries, and . . apply the proceeds to the payment of my debts and legacies;"

State v. Sonnerkalb, 2 N. and McC. 280, January 1820. Dubose testified "that a negro of his went into the store of the defendant, with some corn and an empty bottle; that after he entered, the door was closed; that he heard the corn pour out, and he heard the liquor poured into some vessel. As soon as the negro came out, he took him back into the store, and the defendant admitted, that he had given him the whiskey for the corn, and had sold him a handkerchief for a quarter of a dollar. . . [Witness] acknowledged, that he had sent the negro for the purpose of detecting the defendant." Verdict of guilty.[1]

Billy (a slave) ads. State, 2 N. and McC. 356, May 1820. See State *v.* Whyte, p. 313, *supra.* [357] "sentence was again pronounced in January last; and being again suspended by the governor, or for some cause, the sentence was again repeated in April last: From these facts, another ground [for a writ of prohibition to prevent the execution] was taken, . . That supposing the justices originally qualified, yet they were incompetent in January last, to repeat the sentence, . . had not then taken the oath prescribed by the act of [December] 1819, though they did so afterwards. . . [358] within the ninety days prescribed,"

Motion dismissed: "passing the sentence in April . . was legal,"

[1] Act of 1817. 1 Brev. Dig. 418.

Ashbell v. Witt, 2 N. and McC. 364, May 1820. Defendant said that "the plaintiff was forsworn, and he the defendant would overthrow his oath, so that it should never hurt a negro."

Foster v. Cherry, 2 N. and McC. 367, May 1820. "he was about to give some negroes to his children, . . all of whom were then young, and had called on him to be a witness"

State v. Hudnall, 2 N. and McC. 419, May 1820. [421] "a declaration in Prohibition . . that John Hudnall and William Vaughn, acting as Justices, but without being so . . and Warner Macon, and others, acting as freeholders, but not being such, tried a negro, named Manuel, the property of . . Silliman, on a charge for administering poison to Roger Parish, and before whom the said negro was convicted and sentenced to be executed. . . [422] that the negro had not been tried within [six days] . . after being apprehended; that the master had not been notified of the accusation, and that on the trial of the slave, the testimony of Roger Parish, the prosecutor, was admitted without his being sworn. . . the defendants filed a general demurrer, . . sustained . . appeal . . to this Court to reverse that decision,"

Demurrer overrruled: [424] "Every feeling of humanity and justice revolts at the idea, that any other mode of trial, less formal . . than what the act [1] has prescribed, should be sanctioned. . . But the defendants are still allowed to plead to the declaration, and in time for the trial . . at the next Circuit, . . And in the mean time, and until a final decision . . the defendants are prohibited from all further proceedings on the trial had against negro Manuel." [Gantt, J.]

Lloyd v. Monpoey, 2 N. and McC. 446, May 1820. Action for beating a negro of the plaintiff. "that defendant came . . whilst the family were at the dinner table; . . assaulted Chloe violently with his fists, knocked her down, gave her four or five blows about the head, kicked her twice in the back, and swore he would have her ears; . . that Doctor Bennett was sent for . . [448] that Chloe . . continued in a state of insensibility a long time. . . Nancy Gough, ['a professed nurse'] . . said, that Chloe was the wife of her brother; that . . she was called to nurse and attend her . . she miscarried: . . [Witness] [449] for the defendant, said, . . that on the Friday after, she saw Chloe in a back piazza shelling beans; . . heard, that Chloe stole a fowl from the defendant's yard; Chloe confessed, that she had taken the fowl, but not that she had stolen it;" witness for plaintiff said [448] "that . . it had been afterwards discovered, that the theft [for which defendant [447] 'himself had her punished'] . . had been committed by her husband, and that she was innocent; . . [450] The Jury found a verdict for the plaintiff in the sum of $500." New trial refused.

Gist v. Cole, 2 N. and McC. 456, May 1820. [457] "Mr. Gist . . had been fined by Captain Cole, . . for divers defalcations, in not performing patrol duty, to the amount of about $70; . . Captain Cole issued his

[1] Act of 1740. P. L. 165.

warrant . . pursuant to the directions of . . the patrol act,[1] . . execution, levied upon a negro . . of Mr. Gist, . . [who] sued out a writ of replevin to the sheriff . . who took away the . . negro . . and delivered him back"

Held: [464] "that the writ of replevin . . was not warranted by law, . . that the negro . . should be delivered back to the military officer . . to raise the fines" [463] "the Patrol Law . . ought to be considered as one of the safe guards of the people of South-Carolina, for the protection of their dwellings . . and as a security against insurrection; a danger of such a nature, that it never can or ought to be lost sight of in the southern states. It may justly be considered as a branch of our Militia system;" [Bay, J.]

Wallace v. Frazier, 2 N. and McC. 516, November 1820. [517] "the negro had been . . under the hands of a doctor who pronounced it to be a *white swelling*, . . probably incurable, . . lessened his value from 25 to 30 *per cent.*" [518 n.] "He was, notwithstanding . . now worth $450,"

Evans v. Rogers, 2 N. and McC. 563, November 1820. Evans, the overseer of Rogers, and [564] "five of his hands had worked in the crop of Rogers," "Rose [the slave of Evans] was worth seven or eight hundred dollars." She was sold to Rogers, under an execution, and hired to Evans "at $5 per month."

Leau v. O'Hara, 1 McCord 19, January 1821. Bill of sale, dated June 8, 1807: [20] "I . . sell . . to . . Leau, a certain negro fellow, called Charles, now in Georgetown gaol," The bill of sale "was not delivered until the 15th of June; . . the negro escaped from gaol on the 14th, . . it was known to the plaintiff that Charles was a run-away, and on that account the defendant consented to take for him [$350,] much less than his appearance and qualities ought to have commanded;"

Martin v. Maverick, 1 McCord 24, January 1821. Action of trover. "The plaintiff owned a negro woman . . who ran-away from him in June, 1809, . . In an advertisement published . . in the City Gazette, . . 1st March, 1810, offering a reward for her apprehension, . . she is said to be of the Angola country, and to speak the French Creole. . . the defendant . . alleged that he had been in the possession of this negro from . . 1805, . . and that he had then bought her on board an African slave ship. . . [25] [The plaintiff] gave in evidence . . that on a former trial . . one of the jury put a question to her . . in . . French . . which it was said she understood, and answered in the same language. . . The plaintiff's counsel objected to the defendant's going into evidence, that she spoke the Coromantee and not the Angola dialect; . . overruled . . the witness stated that he knew something of both . . and that they were so different, that those nations could not understand each other, . . propounded . . questions to her in the former, which she seemed to understand, and gave her answers in the same. . . verdict for the defendant." New trial denied.

[1] Act of Dec. 19, 1809, sect. 5. 8 St. at L. of S. C. 516.

Sampson v. White, 1 McCord 74, January 1821. "John Locklier, the other subscribing witness, was a coloured man, and therefore his testimony was rejected."

Held: [76] "The ordinary undoubtedly had a right to reject the testimony of Locklier upon inspection. Colour is in many cases an uncertain test; but . . sufficient to authorize the Court to throw the burthen of the proof upon the other side." [Nott, J.]

Ex parte Stephens, 1 McCord 87, January 1821. The testator bequeathed all of his negroes to be divided equally among his grandchildren. [88] "A sale of the negroes was made by the executors . . 1817, for the purpose of enabling each legatee to purchase in the amount of his share."

U. S. v. the Johnson, 25 Fed. Cas. 1200 (20 Niles Reg. 137), April 1821. Libel of forfeiture against the brig *Francis F. Johnson* for alleged violation of the laws relating to the slave trade.[1] The brig "departed from Alexandria . . laden with negro slaves, . . destined for . . New Orleans, . . All the slaves on board, except two, were entered on the manifest." They had been acting [1201] "one as cabin boy and the other as cook or ordinary mariner, for months past in the coasting trade of the Bay of Chesapeake, . . they belonged to a citizen of Baltimore, . . in a conversation on board he said, if one of those two negroes did not behave better, he might sell him at New Orleans." Libel dismissed.

Miles v. James, 1 McCord 157, May 1821. The ferryman refused to [158] "assist them in crossing. . . saying to them, go and pay your ferriage to the negro, and he will put you over. . . swearing he would not wet his foot for any of them that day. . . the negro brought the flat as near the bank as he could; . . every thing in the cart was lost."

Held: the ferryman is liable. [160] "further . . the law, declaring that ferries shall be kept by white men.[2] . . The negro then could not be . . his agent."

State v. Mary Fuller, 1 McCord 178, May 1821. "The defendant had been convicted of a misdemeanor, for trading with a slave, and had been afterwards pardoned by the governor, upon the condition of leaving this state in the course of two weeks."

Atkinson v. Hartley, 1 McCord 203, May 1821. Action of slander. "The words charged . . were, 'you are a damned mulatto son of a bitch.' . . that in a quarrel . . where both were much excited, and when, as it was supposed, the plaintiff had gone into the house to get a gun to fire on the defendant's son, he said to him, bring out your gun and shoot, 'you damned mulatto son of a bitch, or you damned mulatto looking son of a bitch, . . [204] if you are not a mulatto, your looks belie you damnably.' The jury . . found a verdict . . for $500 damages."

New trial granted: "the words laid in the declaration are actionable." But the words proved do not support the declaration.

[1] 2 St. at L. 426, sect. 9.
[2] 2 Brev. Dig. 191.

Davis v. Duncan, 1 McCord 213, May 1821. A negro girl was lent to the daughter of the testator on her marriage; [214] "but the husband sent her back, and refused to accept of her upon such terms." Her second husband "took this negro woman with him. The overseer, under whose charge she was, forbid him to take her. He, nevertheless, tied her, and took her away."

Smith v. McCall, 1 McCord 220, May 1821. "action . . on a note . . for part of the purchase money of a negro slave. . . bill of sale, warranting the title and soundness of the negro, but nothing else." "The defence set up was, that the negro had an inveterate habit of running away, which so much impaired his value, that the plaintiff was not entitled to receive more than had already been paid."

Held: [220] "The principle . . that a sound price implies a warranty of soundness of property . . [223] has never been extended to the moral qualities of a slave. . . The character of a slave depends so much upon the treatment he receives, the opportunities he has to commit crimes, and the temptation to which he is exposed, that we can form but a very imperfect opinion of it, abstracted from those considerations. A vice which would render him worthless in one situation, would scarcely impair his value in another. A habit that would render him useless to one man, would scarcely be considered a blot upon his character in the hands of another." [Nott, J.]

Evans ads. Parr, 1 McCord 283, May 1821. "that . . a negro child, the property of the defendant had been found dead, which was supposed to have been murdered, and that that . . prevented his entering his appearance"

City Council v. Palmer, 1 McCord 342, May 1821. [343] "the chimney blazed out in consequence of a negro . . throwing into the fire a band box filled . . [344] verdict for the city of $50." [1]

Held: the master is responsible. "the chimney was kept so foul as to take fire."

M'Neil v. Philip, 1 McCord 392, May 1821. [393] "the Revenue Cutter, commanded by the plaintiff, . . [took as] prize . . the *General Blake* . . hovering on the coast with negroes on board, . . four Africans, of whom Ellick was one. That they were all brought into Charleston by the Cutter." Captain Philip received Ellick [392] "from the plaintiff, under a promise to return him . . when the business of . . prize was settled, but thought himself as much entitled to the negro as the plaintiff. . . [393] about three years before . . [this] trial, . . [Ellick] was . . working out for captain Philip, . . in a coasting vessel, and was hired to captain Mead. Witness supposed he was not worth more than $300, as he sometimes got drunk. He further said, the usual wages of a negro coaster were from 8 to 10 dollars per month." [392] "twelve or fifteen months before [the trial, Captain Philip] . . sold Ellick to a back countryman. . . [393] Ellick was an African, and worth

[1] Ordinance, "that the owner . . [343] whose chimney shall . . blaze out . . shall be subject to a fine of not less than fifty . . dollars."

$500. . . The plaintiff . . denied that the defendant was a joint owner with him under the act of Congress, or a sole owner by occupancy."

Held: [394] "It is not necessary to inquire into the strict legal title of the plaintiff . . under the authority of the case of Norwood *v.* Manning, decided . . 1817.[1] . . [395] defendant had stipulated to return Ellick . . good faith required this contract should be fulfilled"

Brown v. Shand, 1 McCord 409, May 1821. [410] "stated, that he meant to provide [in his will] for Mary, (his slave,) and her children."

Wells v. Spears, 1 McCord 421, May 1821. "The wench had a child a year old. After she had the child, she looked thinner . . She ranaway from the plaintiff a few weeks before the sale, crossed the great Saltketcher and lay in the swamp near defendant's plantation. Defendant gave information to the plaintiff, and, on the plaintiff's coming for her, the defendant agreed to purchase, . . [422] The wench was said to be worth $500; . . defendant [gave notes for that amount and] boasted that he had made a good bargain, if the wench turned out . . sound. Soon after . . the wench was taken sick. The defendant called medical assistance . . in the last stage of the disorder, and she died in a few days . . Defendant offered to return the child, which plaintiff refused." [421] "the child being young, became . . an expense and trouble" The plaintiff brought an action for the purchase money. Verdict for the defendant. New trial [425] "ordered, unless the defendant, according to his former offer, shall return the child . . within . . three months."

White v. Helmes, 1 McCord 430, May 1821. [431] "there were none but negroes at Leger's . . [435] The appellants . . introduced a negro woman, Eliza Holmes, admitted to have been born and bred free. She was rejected, as incompetent."

Held: "properly rejected. There is no instance in which a negro has been permitted to give evidence, except in cases of absolute and indispensable necessity, nor indeed has this court ever recognised the propriety of admitting them . . where the rights of white persons were concerned. When we consider the degraded state in which they are placed by the laws of the state, and the ignorance in which most of them are reared, it would be unreasonable as well as impolitic to lay it down as a general rule that they are competent witnesses." [Colcock, J.]

Cohen v. Hume, 1 McCord 439, May 1821. [440] "The driver drove well. . . [441] The horses and front wheels were in the flat, when the carriage went over-board." [440] "The driver held by the reins, until they broke, when he caught by the wheel, having left his seat. . . [442] The current was very strong. The negroes assisted and did all they could. They stripped and dived after the carriage." [440] "one of the ladies in the carriage" was drowned.

Clifton v. Phillips, 1 McCord 469, November 1821. "an action . . in nature of an action for ravishment of ward, to try . . whether a negro the ward of plaintiff, held in slavery by the defendant, was . . en-

[1] Not reported.

titled to his freedom. The jury found a verdict establishing the right . . to freedom, but found no damages,"

Held: plaintiff is "entitled to costs." "the action . . was necessary to effect an important object."

McGee v. McCants, 1 McCord 517, November 1821. [519] "saw the negroes go into the waggon . . hired to move them."

Hughes ads. Banks, 1 McCord 537, November 1821. "Dr. Hammond . . was called in to attend the woman . . about seven weeks after the sale, . . [538] excessively ill, and died on the next evening. . . [539] proved by plaintiff [Banks], that Hughes acknowledged that the woman had had the venerial many years, (12 or 14) before, but had got entirely well; although some of her children had cutaneous eruptions, . . easily cured;" [538] "The defendant [Hughes] proved . . that she was . . one of the best hands of Hughes' whole gang of female slaves. . . fat, sound and hearty . . within two weeks of her death. . . [539] verdict for $600 and costs."

State v. Cole, 2 McCord 1, January 1822. "Motion for a prohibition . . to prevent the collection of certain fines . . for the non performance of patrol duty."

Held: [4] "The [patrol] act of 1819, is only a re-enactment of the act of 1809, and the former acts, with some small alterations. . . [5] no repugnancy . . in those particulars which can effect [*sic*] the Relator,"

State v. Marshall, 2 McCord 63, January 1822. "a Justice of the Peace, and two freeholders, were about to try a free person of colour for harbouring a slave, belonging to Anny Le Prier, another person of colour;"

State v. Cole, 2 McCord 117, May 1822. "The defendants . . were indicted for a riot. The prosecutor . . swore that . . about 1 o'clock on the morning of the 12th of January, 1821, he was roused . . by the report of a gun. Immediately after he heard another; he next heard one of his servants running round the house, enquiring if he was awake. . . before he could get his clothes on, his driver called him. . . on his way to his negro houses, he met Capt. Cole, . . who was abusing [118] one of his negro women. She was complaining that he had beaten her. The witness asked Cole what he was doing, he said he was patrolling. Witness replied it was very well, and asked him why he had beaten the negro woman. He said on account of her insolence. One of his fellows then came up and said he had struck him in the face with the but [*sic*] of his gun. Cole at first denied it; he afterwards acknowledged that he had beaten him in the manner the negro had related, and said he had done it because he had refused to obey his orders. He then asked him why they had fired the guns; he said they had been shooting dogs. Cole then advanced towards him brandishing his gun in a very angry manner, and using some threatening language. About this time the two other defendants came out of the negro houses armed with guns and sabres. They were desired to do their duty, and witness went along with them to the negro

houses. The first they came to was locked, and the owner from home; he broke the house open and let them examine it. Cole did not get off of his horse all this time; the other two were on foot. Cole then began abusing him; told him his negroes were a nuisance to the parish; that he was a damned mean fellow; that he had supported his negroes in killing his hogs. . . The negro woman had been beaten with a sabre. . . Cole had frequently been at his plantation before, and committed similar outrages under pretence of patrolling. He knew Cole to be the captain of a beat company," [124] "The prosecutor said he was actually obliged to remove his family to Charleston, to relieve them from the constant alarm in which they were kept by the turbulent conduct of the patrols." Verdict of guilty.

Motion for a new trial, refused: [123] "the duties of a commander of a company are incompatible with those of a commander of a patrol;[1] . . But admitting this was a regularly organized patrol, . . A patrol is not authorized to announce its approach with the firing of guns, to commence its operations by killing a man's dogs . . carry them on by beating his negroes, and conclude with abusing himself." [Nott, J.]

Elliott ads. Minott, 2 McCord 125, May 1822. [126] "2403 bushels of rough rice . . [were] sent by the defendant's carts and negroes to the plaintiff's vessel, and there thrown into the hold. The carts were under the direction of Mrs. Elliott's servant, who was one of the most trusty on the plantation, and who continued on board until the rice was delivered. . . When the vessel was full, by the defendant's direction, her servant Paris, went on board and remained with the rice until it was measured at the mill."

Lightner ads. Martin, 2 McCord 214, November 1822. Alleged that one of the negroes "had the venereal disease at the time of the sale. . . [215] that this woman had communicated the disease to others of his negroes, by which he had incurred great losses and expense: . . The defendant put her under the care of a physician, and after having gone through a course of medicine, she appeared to have got quite well. At length he determined to sell her, and sent her off for that purpose."

Smith v. Littlejohn, 2 McCord 362, May 1823. "the gift . . was made to the plaintiff [by her father] when [the negro] Lucy was an infant in arms, on the suggestion of the nurse."

State v. Williams, 2 McCord 383, May 1823. "The prisoner was charged with . . negro stealing, . . money raised by subscription . . for his apprehension,"

Ashley v. Reeves, 2 McCord 432, May 1823. [433] "five hundred dollars . . given for a negro fellow. . . lame, . . if sound, would have been worth . . from eight hundred to a thousand dollars."

State v. Calder, 2 McCord 462, May 1823. [464] "in this country . . the universal understanding, that when a servant is spoken of, a person of color is meant." [Nott, J.]

[1] Act of Dec. 18, 1819, sects. 2, 3. 8 St. at L. of S. C. 538.

City Council v. Van Roven, 2 McCord 465, May 1823. [466] "he and Mr. Moses saw several negroes in her shop after 8 o'clock, P. M. That some of the negroes were drinking spirits and water,"

State v. Mazyck, 2 McCord 473, May 1823. [474] "that . . Mazyck is the owner of a settled plantation . . and that from the first . . of January, 1822, he hath employed . . more than ten working slaves, and that . . [he] hath not during the said period employed . . a white man capable of performing patrol duty," [1]

Held: [476] "the default being for the whole year, . . the penalty is sixty dollars."

State v. Taylor, 2 McCord 483, May 1823. "The indictment [2] contained two counts; one for murder, the other for manslaughter. . . It appeared that two of the prisoner's negroes had run away, and Jacob particularly had been absent for some considerable length of time; that upon getting some information of them [in June 1821], he went in pursuit . . and caught them some where about Wappoo Creek; that . . he caused their hands to be tied behind their backs, and then tied the two together, and ordered them into a boat . . [484] to bring them over to Charleston, and made them sit down in the bottom of it, while he sat in the stern with a loaded double barrelled gun beside him. That . . the prisoner, when about 100 yards from the shore, took up his gun and deliberately took aim at Jacob saying, 'damn you, you shall never kill any more hogs,' and fired off one of the barrels at him. But as the negro sat in the bottom of the boat, with his knee up . . the contents of the gun struck his knee instead of entering his body. As soon as the boat reached the . . landing, Mr. Robert Hume, who was . . looking at the boat as it approached, and who saw the flash and heard the report of the gun, went with several others up to the boat, and . . found the prisoner with the gun in his hand, and the negro laying on his back in the bottom of the boat, bleeding from the wound. Mr. Hume, who was a principal witness for the prosecution, and who appears to have had great merit in carrying on this prosecution, in the cause of humanity, asked the prisoner if he had shot the negro, who answered in the negative, and said the gun had not been fired for a year. . . Mr. Hume, then demanded the gun from him, . . But he refused to give it up. Mr. Hume, however, . . forcibly took the gun from him . . and found that it had just been fired off. Upon trial, he found the other barrel loaded and primed. The defendant was very abusive, . . Mr. Hume had the wounded negro taken up to the house of Dr. Glover, . . to have the wound dressed; while the prisoner, who was opposed to it, continued to be very abusive. Dr. Glover then dressed the wound, after which, the negro was sent to the work house to be taken care of by the surgeon of the establishment, Dr. Logan. . . [485] Drs. Glover and Logan . . both attended the wounded negro carefully till the first of August following, when he died, and they were both clearly of opinion, that the wound in the knee was

[1] Act of Dec. 18, 1819, sect. 13. 8 St. at L. of S. C. 540.
[2] Act of May 10, 1740, sect. 37. 7 St. at L. of S. C. 410.

the occasion of his death. . . [492] the jury, without the smallest hesitation, found a general verdict of guilty, which convicted the prisoner of the offence of murder. A motion for a new trial and in arrest of judgment was then made,"

Dismissed: "there is no express repeal of the old law of 1740; it remained in full force . . till the act of [December 20,] 1821 [1] was passed" [Bay, J.]

State v. Gulden, 2 McCord 524, May 1823. "A Bill of indictment . . under the act of 1821, for murdering a slave. In addition to the count for murder, . . also a count for killing in sudden heat . . the grand jury found a true bill as to the last only, . . [525] the solicitor . . entered a *nolle prosequi*. A motion was then made to discharge the prisoner. In opposition . . the solicitor exhibited the examination of several witnesses taken on the inquest . . furnishing strong presumptions of the guilt . . and declared his intention of preferring a new bill . . next term. The court rejected the motion, but ordered the defendant to be bailed, himself in $2000, and two securities in $1000 each, . . A motion was made in this court to rescind that order, and for the discharge of the prisoner," Refused.

Elkison v. Deliesseline, 8 Fed. Cas. 493 (Brun. Col. Cas. 431), August 1823. "This was a case of an arrest of a [colored] British seaman, under the third section of an act of the state of South Carolina, entitled 'An act for the better regulation of free negroes and persons of color, and for other purposes,' passed in December, 1822." The sheriff took the prisoner, a native of Jamaica, "out of the ship *Homer*, a British ship trading from Liverpool to this place [Charleston]. . . the British consul has also presented the claim of this individual as a British subject, and with it a copy of a letter from Mr. Adams to Mr. Canning, of June 17th last, written in answer to a remonstrance of Mr. Canning against this law. . . It had its origin thus: Certain seizures under this act were made in January last, some on board of American vessels and others in British vessels; and among the latter one very remarkable for not having left a single man on board the vessel to guard her in the captain's absence.[2] . . I felt confident that the act had been passed hastily, and without due consideration, and knowing the unfavorable feeling that it was calculated to excite abroad, it was obviously best that relief should come from the quarter from which proceeded the act complained of. . . [494] The application was made to the state authority, and the men were relieved; . . from that time the prosecutions under this act were discontinued, until lately revived by a voluntary association of gentlemen, who have organized themselves into a society to see the laws carried into effect. . . the state officers . . from the time that they have understood that this law has been complained of on the ground of its unconstitutionality and injurious effects upon our commerce and foreign relations, . . have shown every disposition to let it sleep. . . The opposi-

[1] 6 St. at L. of S. C. 158.
[2] Calder *v.* Deliesseline, p. 326, *infra*.

tion to the discharge of the prisoner has been conducted by Mr. Holmes, the solicitor of the association, and by Col. Hunt. . . Neither of the gentlemen has attempted to prove that the power therein assumed by the state can be exercised without clashing with the general powers of the United States to regulate commerce; but they have both strenuously contended, that *ex necessitate* it was a power which the state must and would exercise, and, indeed, Mr. Holmes concluded his argument with the declaration, that, if a dissolution of the Union must be the alternative, he was ready to meet it. Nor did the argument of Col. Hunt deviate at all from the same course." This law [495] "is in effect a repeal of the laws of the United States, *pro tanto,* converting a right into a crime. . . also . . the seizure of this man, on board a British ship, is an express violation of the commercial convention with Great Britain of 1815. . . Such a law as this could not be passed even by the general government, without furnishing a just cause of war. . . [496] One gentleman likened the importation of such [free] persons [of color] to that of clothes infected with the plague, or of wild beasts from Africa; the other to that of fire-brands set to our own houses only to escape by the light. But surely if the penalty inflicted for coming here is in its effect that of being domesticated, by being sold here, then we ourselves inoculate our community . . turn loose the wild beast . . and . . put the fire-brand under our own houses. . . I am decidedly of the opinion that the third section of the state act . . is unconstitutional and void, and that every arrest made under it subjects the parties making it to an action of trespass. . . [497] This act operates only as to freemen—free persons of color—and not as to slaves; so that a whole crew of slaves entering this port would be free from its provisions. . . [498] I possess no power to issue the writ of *habeas corpus* [as the prisoner is in custody under state authority [1]]; . . for that remedy he must have recourse to the state authorities. . . as to the writ *de homine replegiando* I have no right to refuse it; but although it will unquestionably lie to a vendor under the sheriff, I doubt whether it can avail the party against the sheriff himself." [Johnson, J.]

Reed v. Price, Harper 3, November 1823. "a woman . . sent, with some others, to this State, about twenty-seven years ago" from Virginia.

Rodgers ads. Norton, Harper 5, November 1823. Held: "The act of 1788, for establishing the bounds of the prisons, . . [6] does not exclude free persons of color: nor would it be just, after forcing them into Court, to withhold a privilege so important, and which is granted to all others." [Huger, J.]

Rice ads. Spear, Harper 20, November 1823. "action . . instituted by the plaintiffs, as guardians of . . Charles, to establish his freedom, under the will of . . Wm. Hutt, . . Va. . . 'that negro boy Charles shall continue with Jas. Piggott for four years, to learn the tailor's trade, after which time he shall be free.' . . soon after the death of Wm. Hutt, Piggott . . died; at whose death . . Charles went about at large for several years in [Virginia] . . perfectly free and unrestrained . . [21]

[1] Proviso to the 14th section of the judiciary act of 1789.

was not inventoried as a part of the estate" [22] "That the estate will be able to pay debts." [21] "15 or 20 years ago . . judgment by default [against the executors] was given, . . execution thereon issued, . . levied on . . Charles, . . sale . . by the sheriff" He was bought by "a former deputy sheriff," of the same county, from whom defendant's title is "deduced."

Held: [21] "the sale . . was void; he being, at the time, a freeman . . [22] something palpably . . wrong in . . selling this man . . without a previous investigation of his claims under the will, and the executors assent thereto." [Gantt, J.]

Owens v. Ford, Harper 25, November 1823. "The defendant set up, by way of discount, that the note . . was given for a negro: . . *before* the sale [he] had committed a burglary, . . *afterwards* tried, convicted, . . his ears being cropped, his value was greatly impaired. . . the commission of the offence was unknown to both parties at the time of the sale. . . verdict for the plaintiff, for the whole amount of the note."

Motion for a new trial, refused: [26] "if there is no warranty implied, against the vices of the slave,[1] it would be inconsistent that there should be . . a warranty [implied] against the consequences of such vices."

Gray ads. Young, Harper 38, November 1823. The slave who was sold [39] "complained of a pain in her side." [41] "the witnesses . . detected at once . . a hernia of an unusually large extent, which constantly endangers her life."

Held: "the complaints . . are mere matters of inducement; . . There is another view . . equally conclusive, . . Such evidence is, I think, admissible of necessity. . . it is from these *indicia* only, that . . [a physician] is able to fix the character of the disease, . . and for the same reason that they are necessary to him, we must admit them." [Johnson, J.]

State v. Counsil, Harper 53, November 1823. A slave had been convicted, before a court consisting of magistrates and freeholders,[2] of stealing "four sides of leather and eight pair of shoes, of the value of $12," and "his sentence had been executed by whipping on the bare back." Counsil was indicted for receiving the stolen goods. [55] "the offence . . as developed by the evidence, was very flagrant," He was found guilty.

New trial ordered: [55] "as the probability is, that the prosecution will not be abandoned . . advisable to notice a few difficulties . . Whether such a conviction [of a slave] can be given in evidence on the trial of the accessory? . . [56] my mind inclines strongly . . that . . [it] may" [Johnson, J.]

Glenn v. Lopez, Harper 105, January 1824. Action against "a free person of color, (a negro,)" for harboring a slave. "verdict for $——, damages. He was then surrendered by his bail, and he gave security to

[1] Smith *v.* McCall, p. 318, *supra.*
[2] Act of 1740. P. L. 166.

keep the prison bounds. . . presented his petition, accompanied by a schedule of his property, duly sworn to, praying the benefit of the act for the relief of insolvent debtors.[1] . . the presiding judge being of opinion that he was not competent to take an oath, ordered his discharge without administering the oath required by the act."

Held: [109] "taking the oath prescribed by the act is made a condition, *sine qua non*, to entitle him to its benefits. There is no exception, . . the defendant ought not to have been discharged without taking the oath." [Johnson, J.]

Carsten v. Murray, Harper 113, January 1824. [115] "The injury of which the plaintiff . . complains, is, that the defendant beat his slave; . . the remedy was trespass *vi et armis*. . . Force committed on a slave, is . . an immediate injury to the master."

Calder v. Deliesseline, Harper 186, January 1824. "the sloop *Bob,* McKee, master, of Nassau, New Providence, manned by the master, a white man, the mate, a free man of color, and four slaves, seamen, (all . . . British subjects,) arrived at Charleston, in the beginning of January, 1823, consigned to . . Calder, a British merchant, resident in Charleston. . . 11th January, after the vessel had cleared at the custom-house, and was preparing to go to sea, . . in the absence of the master . . the sheriff's officer went on board . . arrested the mate and seamen, and carried them to gaol.[2] The consignee and master . . demanded the release . . and the defendant so soon as he became satisfied that they were immediately about to depart, discharged them upon the payment of the accruing fees," Calder then brought an action against the sheriff. "On the trial . . before the magistrate, the circumstance of three [four] of the persons seized being slaves, was not . . insisted upon. The men detained were considered as British subjects, and as such, it was conceived that they were protected from seizure, under the treaty of commerce . . The same view was presented to the judge before whom the appeal was made, and the judgment of the magistrate was affirmed."

New trial ordered: [187] "seizure and detention [of the four slaves] could not be justified under the provisions of the act, which has reference to free negroes or persons of color, and not to slaves."

Tabitha Singleton v. Eliza E. Bremar, widow and administratrix of F. Bremar, Harper 201, January 1824. "action of assumpsit, to recover the following promissory notes, . . 'Charleston, 2d October, 1813. Twelve months after date, I promise to pay Tabitha Singleton, or order, two thousand dollars, for value received. (Signed) F. Bremar,' [There was another for the same amount, dated October 2, 1815.] . . The defence was, that these notes were . . either *nudum pactum*, or *ex turpi contractu*. . . that Bremar bought [Tabitha] . . more than thirty years ago, and she was living with him till his marriage . . in 1794, . . that he set Tabitha free, but maintained the same intercourse . . [202] She . . boasted of the connexion, and of his generosity. She and her mother

[1] P. L. 251.
[2] Under the act of Dec. 21, 1822, sect. 3.

and sisters all lived together; . . The receipts for rent paid by Bremar, from . . 1795, for the houses occupied by the same woman, were produced, amounting to a large sum. . . [also] [203] the deed of F. Bremar, . . March, 1794, setting . . free . . my mulatto girl, Tabitha; also, the records of two other deeds, emancipating . . her sisters; and the record of another deed, conveying to her a negro. In reply, plaintiff produced . . a deed of F. Bremar, . . April, 1794, conveying to . . 'Tabitha, a mulatto girl, lately belonging to me,' two negroes, Sally and Polly; consideration, her faithful service; also, a deed . . 1809, whereby 'in case of death,' he gives . . Tabitha, a free brown woman, a house and lot . . 'having received full value.' . . that Bremar had . . sold the house . . [a witness] swore that she saw Bremar come . . and tell plaintiff that he was going to sell these negroes, and she afterwards saw them no more. . . testified to the virtuous character of plaintiff; that Bremar had been her guardian, . . The presiding judge charged the jury . . ample consideration [for the notes] had been proved. 1. Cohabitation. 2. Surrender of property. . . [204] The jury found for the plaintiff the full amount of the notes and interest."

New trial granted: [212] "if the notes . . were given in consideration of cohabitation, though past, they must be considered as voluntary, and the plaintiff's action must fail. . . [213] the case ought to go down . . to be tried upon its merits, if any merit it has; of which the jury must judge." [Nott, J.] See same *v* same, p. 332, *infra.*

Willinck v. Davis, Harper 260, January 1824. The defendant applied to the plaintiff, the owner of a vessel, for a passage from Havana to Charleston. "She was in bad health, and required the attendance of her negro servant. Some apprehension was entertained . . that the servant could not legally be brought within the United States, . . On their arrival in Charleston, the vessel and negro were both seized under the act of congress," The property was released on payment of costs. The plaintiff paid them, the defendant having promised to indemnify him.

Held: if the promise was made at Havana, it was [261] "void as against sound policy; if made at Charleston, after the seizure . . it was . . without any consideration."

Payne ads. Robinson, Harper 279, January 1824. Action of trover. "It appears . . that in the spring of 1820 [after the execution of the treaty ceding Florida to the United States, and its ratification by the United States, but before its ratification by Spain], a British schooner . . from Jamaica, came into the river St. John's, in East Florida, with seventeen negro slaves; that they were of bad character, and understood to be convicts, who had been shipped for their crimes; . . ten were either sold [by Robinson, the plaintiff,] to Mr. Houston, on Talbot Island, or were engaged to be sold to him, and were, in March 1820, working on his plantation, . . the slaves rose one night, broke open a store-room, and plundered from it provisions, arms, and ammunition; that Mrs. Houston (Mr. Houston being absent,) requested a gentleman present to apply for assistance at Amelia Island, where there was then a United

States garrison; . . [280] requested Col. Bankhead, then in command, to send a force to take charge of the negroes on Talbot Island; . . that in that part of Florida, there could scarcely be said to be any government, . . that negro slaves had been introduced into Georgia, through Florida, in 1817 and 1818; that Col. Bankhead having also been informed, not long before . . that a company had been formed to introduce slaves into Georgia, thought this an occasion for complying with Gen. Gaines' order of the 22d May, 1819, relative to attempts on the southern frontier to introduce slaves into the United States, and detached Lieutenant Griffiths, with a competent force, to act under it, and also to protect the inhabitants of Florida from any outrages which the slaves might commit; that . . Griffiths . . took away the ten negroes . . March, 1820; that he brought them to Fernandina, where Captain Payne was . . in command; that . . they were maintained at the expense of the United States, and one of them having forcibly endeavored to make his escape, was killed by a sentinel . . that Captain Payne . . refused to deliver them up until instructed by his superior officer, . . upon the application of . . an attorney . . to the secretary at war, they were ordered to be restored on the payment of their expenses," The demand of the plaintiff, Robinson (a British subject from Jamaica), [282] "was for the expenses paid to the officer . . and for the negro shot." [280] "that he applied to Governor Coppinger, and got permission . . [281] to bring negroes into Florida; . . The judge charged . . that the officers . . were perfectly excusable; . . The jury found a verdict for $609 68,"

Motion for a new trial, granted: [285] "No more force was used than was sufficient to quell the insurrection,"

The Emily and the Caroline, 9 Wheaton 381, February 1824. [388] "These vessels, although cleared out, were seized before leaving the port of Charleston; . . [389] All the preparations were such as were peculiarly adapted to what the witnesses call slaving vessels, and not to those for the merchant service. The ship carpenter . . [390] says, the vessels were fitting in a manner similar to that in which vessels generally are for the slave trade; that the *Emily* was almost complete, and the work in which he was engaged on the *Caroline,* was of the same character and description. . . the right of seizure [1] attached. We can discover no sound reason for delaying the seizure until the vessels were on the point of sailing." [Thompson, J.] Decrees of the Circuit Court for the District of South Carolina, affirmed.

Slack v. Littlefield, Harper 298, March 1824. "The constable . . went to the plaintiff's house, and found there about sixty pounds of picked cotton, which defendant claimed as his own. . . The plaintiff's clerk . . proved that he, the witness, had a few nights before purchased twenty-four pounds of this cotton from a negro . . who had a written permit; but the permit was not produced."

Ex parte Richardson, Harper 308, March 1824. A slave had been tried for shooting with intent to kill, by a justice of the peace and two

[1] Slave trade acts of Mar. 22, 1794, ch. 187, and of Mar. 2, 1807, ch. 77.

freeholders, [309] "sentenced . . to twelve months imprisonment; and . . is now . . in the goal [*sic*]" The freeholders had not been summoned properly, and one resided outside the county where the offence was charged to have been committed and had no freehold there.[1]

Held: [311] "it was not a court, . . ordered that a prohibition do issue."

Ruger v. M'Burney, Harper Eq. 21, March 1824. [22] "the negro [man] was not worth more than four hundred dollars . . being of base character and diseased in the glands of the throat; . . occasioned considerable expense for medical attendance. . . [24] he had lost considerably by the sickness . . and his being unruly."

Haynesworth v. Cox, Harper Eq. 117, April 1824. Will: "To my niece . . the four following negroes, Barbara and her three children," "After the making of the will and before the death of the testator, . . Barbara . . had a child born."

Held: the child passed with its mother to the legatee.

Musgrove v. Wofford, Harper Eq. 175, April 1824. "allege . . that . . Wofford has altered the names of said negroes, to defraud . . remaindermen, and to prevent the negroes being identified; . . Wofford . . states that he did it for convenience." Bill to compel him to give security for their forthcoming, dismissed.

Porteous v. Hazel, Harper 332, May 1824. Action of trespass. "The defendants and others, assuming to act as a patrol, went into the house of the plaintiff, and took from thence two guns, . . The plaintiff was not then living in his house, but it was in the possession of a colored man, who took charge of, and acted as overseer of the plantation. He was asleep when they came to the house and opened the doors. No regularly appointed captain of patrol was present; but the son of the captain of patrol, who claimed to command, by the authority of his father, as his deputy. Verdict one cent." Motion for a new trial granted.

Willbourn v. Parham, Harper 375, November 1824. [376] "She took one of [the negroes] . . on her horse behind her, and got a friend to take the other, and carried them home."

Gazoway v. Moore, Harper 401, November 1824. "January 6th, 1823. On the first . . of January next I promise to pay . . eighty dollars, for the hire of . . negro man" "verbally agreed to pay $20 more . . provided cotton should bring $3 per hundred that season,"

Kennedy ads. Garlington, Harper 424, November 1824. "The process states that [three defendants] . . are indebted to the petitioner, . . fifty dollars, for illegally beating and abusing . . slaves, Hardy and Job, while quietly being in the plantation of the petitioner,"

Rhodes v. Bunch, 3 McCord 66, February 1825. [67] "The object in pulling down the house was . . to expel him . . from the neighborhood; as he was trading illicitly with the negroes." [70] "and engag-

[1] Act of 1740, sect. 10.

ing in every kind of licentiousness." [67] "a great vagabond, with whom no white man associated, . . [68] His honor . . told the jury, that . . he would have done as they [the defendants] had done, . . verdict for the plaintiff for *one cent.*" Motion for a new trial refused.

Braker ads. Knight, 3 McCord 80. February 1825. The defendant "so greatly shot, hurt, and wounded" one slave of the plaintiff, and "so greatly hurt, beat, and wounded another slave . . of the plaintiff," that both slaves died. "a verdict was found for $725, with interest from . . 1818. The defendant . . petitioned for the benefit of the prison bounds act, . . refused [by Judge Bay] . . because he considered the defendant embraced within the exception in the act." [1]

Held: [83] "the present case is not included in the exception," "The statute of 22 and 23 Car. II. c. 7 . . has given character to a class, of cases which clearly fall within" it.

Peake v. Cantey, 3 McCord 107, February 1825. Cantey seized the horses, property of the plaintiff, and "delivered them to the other defendant, James Johnson, a justice of the peace, at the same time making an affidavit, that he believed them to be the property of negroes; whereupon the said James Johnson proceeded to sell the horses, under the 34th section of the negro act," [2]

Held: I. as it was a judicial act, he was not liable in a civil action; II. the act of 1740, authorizing magistrates to sell horses belonging to slaves, is constitutional, for [III.] "slaves can have no property; . . the act [of selling it] is a mere disposition of property which belongs to no one." [Johnson, J.]

Gray v. Court of Magistrate and Freeholders, 3 McCord 175, February 1825. "The appellant . . was taken up . . on a charge of insolence, and for an attempt to strike Mr. William McDow; and a court composed of . . magistrate and two freeholders was formed . . The appellant filed his suggestion for a prohibition . . to restrain them from proceeding in the trial, alleging . . that he was not a negro, mulatto or slave under the negro act of 1740, but a free Indian, . . [176] descendant of a free Indian woman in amity with this state; . . affidavits in proof . . were also filed. Mr. Justice Richardson refused the prohibition" [177] "the court on the refusal . . [178] proceeded to judgment and execution, by inflicting corporal punishment on the relator." An appeal was made.

Held: [177] "the circuit judge [erred] . . in rejecting the application for a prohibition, before the court proceeded to judgment . . it is . . the duty of the superior courts . . to confine all subordinate jurisdictions to their proper bounds, . . [178] The sentence . . having been carried into execution, any order . . would be nugatory," [Johnson, J.]

Clarke ads. Blake, 3 McCord 179, February 1825. Action of trespass *vi et armis*. "James Sharpe, plaintiff's overseer, said several negroes were allowed to keep horses on plaintiff's plantation. Witness had these horses

[1] "if he . . is confined on account of wilful maihem, or wilful and malicious trespass," Act of Feb. 29, 1788. 2 Brev. Dig. 160.

[2] 2 Brev. Dig. 238.

driven up and selected a few for plaintiff's use, and the rest were sold [in July 1822]. A horse and mare were retained and broke for plaintiff's use. . . [180] Plaintiff's attorney . . had ordered the sale" The same month a patrol "drove the colts off, and a mare and the colt of plaintiff. Witness told them the two colts were plaintiff's. . . taken before Col. Hunter J. P. . . who said that as two had belonged to a negro, he . . wished to consult . . an attorney; witness . . told them the mare and colt never belonged to the negroes," [179] "sold at public auction, . . and defendants received some of the purchase money. . . [181] verdict for plaintiff for two hundred and twenty dollars [the value of the four]."

Motion for a new trial dismissed: [182] "The horses . . were the property of the plaintiff at the time of the seizure, . . not then appropriated for the peculiar . . benefit of slaves." [1]

State v. Wimberly, 3 McCord 190, February 1825. [191] "The prisoner was convicted . . for killing a slave [property of another] on sudden heat and passion." [2] Motion to arrest judgment, refused.

Maverick v. Lewis and Gibbs, 3 McCord 211, April 1825. Lease, dated February 15, 1823, of plantation and mill "together with the following negroes, to wit, Jack, (the miller,) Dave," and twelve others. [213] "Dave, Hannah, Lucy, Jinny, Sally, Clarissa and Martin [were] to work in the fields, and Ben, the three little boys, Joe, Ben and Cato and Benbow to attend to the vineyard and the three other gardens, and in hauling every day, manure, sand, etc., into the gardens; and Conder to cook for the whole establishment;" Ben is to carry fruit of all kinds to market and to be paid "one dollar out of every sixteen dollars so sold, he Ben to pay six and a quarter cents out of each dollar he receives to the three little boys."

Stinson ads. Piper, 3 McCord 251, April 1825. "the unsoundness [of the negro woman] . . was a want of understanding."

Held: "a warranty of soundness embraces soundness of mind as well as body."

State v. Blythe, 3 McCord 363, November 1825. "Her lot adjoins her plantation, and the negroes of the plantation were living at a short distance from her house. . . a street between;" She was indicted under the patrol act of 1819, and convicted. New trial granted.

Wingis v. Smith, 3 McCord 400, November 1825. "the empty carriage and horses . . [401] at a furious rate . . encountered a bread cart belonging to the plaintiff . . which was broken in pieces . . and the driver . . much hurt. . . His honor . . thought the master [of the coachman] was answerable for such negligence, and decreed that he should pay . . for the cost of repairing . . and also five dollars more for the loss of the services of his driver for one week."

New trial granted: the master was not liable.[3]

[1] Act of 1740, sect. 34. P. L. 171.
[2] Act of Dec. 20, 1821, sect. 2.
[3] The text and notes give a compendium of the history of slavery.

Pratt v. Wyman, 1 McCord Eq. 156, November 1825. Gale "had acted as supercargo from Havanna to the coast of Africa and back to Havanna in the summer of 1817. In the autumn . . Gale returned to Charleston, . . [157] a charge made of $2,640 for eight slaves said to have been taken by Gale from the cargo, for his own use, on the coast of Africa."

Rhame v. Rhame, 1 McCord Eq. 197, January 1826. [201] "had seen her sitting in the laps of the most vulgar men and servants."

Montgomery v. Eveleigh, 1 McCord Eq. 267, January 1826. [268] "purchased corn and potatoes at the sale to the amount of $435.27½ . . all . . went to the plantation, except $119.88 worth of the corn," [269] "the corn was purchased . . for the . . subsistence of the slaves . . there being no provisions on the place"

Singleton v. Bremar, 4 McCord 12, February 1826. See same *v.* same, p. 327, *supra.* On the new trial the judge [13] "charged the jury that if the notes were given in consideration of cohabitation, . . the plaintiff's suit could not be maintained; but that it appeared to him that the evidence was too slight to establish that point, . . That the deed . . gave her a title to the house and lot upon the death of Bremar, . . The defendant appealed"

New trial granted: [14] "a fee cannot be created to take effect *in futuro.* . . [15] there was no interest arising out of [the deed] . . which entitled her . . to any claim . . against . . Bremar,"

M'Cants v. Bee, 1 McCord Eq. 383, April 1826. [384] "the negro was taken by her in payment of the legacy, . . was a faithful family servant . . by whom complainant was brought up."

Rolain v. Darby, 1 McCord Eq. 472, April 1826. "Rolain's negroes were bricklayers, and Darby's field negroes." [477] "the executor [Darby] sold two of his own negroes, who were very inferior ones, with the two of the estate, who were very valuable tradesmen [for $2000]; . . a short time before this sale, a bricklayer of the estate was sold for $800."

Colcock v. Goode, 3 McCord 513, May 1826. "On or before the 1st January next we . . promise to pay . . four hundred and thirty dollars for the hire of Sam, Silvia, Big Peter, Dorcas, Cavannah and his wife for one year from this date, and we bind ourselves to tax, feed, shoe, and clothe them and to pay doctor's bills and to deliver them in this place on the first Monday in January, 1823. . . [514] January 17, 1822." "Cavannah was jobbing carpenter; . . defendant brought him to the mill, and put him to work as such. Thought Cavannah worked about half his time. He complained of his arm, and witness thought him ruptured. A good carpenter was worth about $150 per year."

Held: [517] "where a gross sum is paid, the warranty is considered as applying to the whole gang and not to any particular member of it." [516] "The extent of the warranty implied is, that as a body they are ordinarily good, and have not been . . culled for the purpose of deception." [Nott, J.]

State v. Raines, 3 McCord 533, May 1826. Testimony of witnesses for the prisoner: [535] "That the negro was a notorious runaway, thief, and house breaker; a sullen, perverse, desperate, dangerous villain; that he had been shot twice, and had a load of buckshot in him, and had been shot at several times; that he was a strong, powerful fellow, and when runaway was dreaded by those acquainted with his strength and character; that he had been frequently tried and whipped for his villainy; that he had broken open Hall's store, in his dwelling house, in Columbia, at night, and stolen money and goods therefrom; that he had received from his master, . . (an Englishman!) upwards of a thousand lashes on that account, six or seven weeks before his death; and had been sent off from Columbia, to prevent his being hung; that he shortly afterwards run away and was caught and lodged in Chester jail. That the prisoner having business in Chester district, the owner of the negro requested the prisoner to bring the negro down to Columbia, and at the same time cautioned the prisoner to have the negro well ironed and to guard against his violence and villainy. That the prisoner was a humane, peaceable man, and a man of good character." Declarations of the prisoner: [534] "That the negro turned sullen and refused to go further, and the prisoner whipped him to make him go along, . . and gave him . . five hundred lashes. That when the prisoner found he could not make the negro go along by whipping, he tied the negro's legs" and went for assistance. He requested two women [535] "to go back to the negro and prevent any one from cutting him loose. . . [He] had permitted the negro to ride his horse a part of the way." Witnesses for the state: "That the negro died about eight minutes after the two women reached him, . . That the negro appeared to have been severely whipped below the small of the back, and the blood appeared in several places, which seemed to have been touched by the end of the switches. That several small switches and two or three larger ones lay near, which appeared to have been much worn, also a stick with a small end and a larger end, seemed to have been used. . . [536] The oath of the prisoner was . . offered to exculpate himself under the act of 1740, which the court refused, . . The jury found the prisoner 'guilty of manslaughter,' but recommended him to mercy."

Held: [543] "No judgment . . can be pronounced on this verdict." I. [542] "Under the old act [of 1740] . . the common law kind of homicide, technically called manslaughter, was intended to be abolished; for the citizen is only made amenable for three kinds of killings, viz., murder, killing in sudden heat and passion, or by undue correction. . . no man has ever been adjudged guilty of manslaughter for killing a negro." [543] "The professed object [of the act of 1821] . . was to increase the punishment as to murder, and to omit the killing by undue correction." II. The act of 1821 did not take away the privilege of exculpation by oath. The slave [546] "is still even now for days and weeks, in many parts of the country, left entirely with the master or overseer, and if . . an accidental killing should happen, why not permit the person killing to prove how it happened? . . If he confess that he caused the

death and state the circumstances . . the whole confession is taken, and if satisfactory, will induce an acquittal." [Colcock, J.]

Wise v. Freshley, 3 McCord 547, May 1826. Two negroes were hired to Freshley at the rate of seventy-five cents a day to help remove obstructions in the Saluda River, "upon the express stipulation that they should not be employed in deep or swimming water," as neither of them could swim well. "all hands had been drinking too much. . . danger being apprehended, Freshley jumped out of the canoe and ordered all hands to jump out, . . The negro Edmond [worth one thousand dollars] jumped out and was immediately drowned. . . Freshley would not permit [his own negro] . . to go in the canoe; . . [548] That there was no necessity of Edmond's going in, . . that the other hands [in the canoe] all of whom were white men, were amply sufficient . . The jury found for the plaintiff one cent." New trial granted.

Real Estate of Mrs. Hardcastle ads. Porcher, Escheator, Harper [1] 495, 1826. [496] "Evidence was . . given . . that Mrs. Hardcastle [who died in 1820 leaving 2377 acres of land] was born in Africa, and received here as a lady well connected; that she acknowledged and treated Catharine Cleveland as her neice [*sic*], who was also born in Africa, and was brought to this State by Mrs. Hardcastle before the American revolution; that she [Mrs. Hardcastle] was generally recognized as the daughter of Captain Cleveland of the British Navy, and a relation of the family of the Kinlochs of this State. This evidence was attempted to be rebutted by testimony shewing that Mrs. Hardcastle was a colored woman, and . . [497] her niece . . also . . His Honor . . charged the jury, that they must presume Mrs. Hardcastle to have been illegitimate, as the marriage of Captain Cleveland with her mother, who was stated to have been an African Princess, was not proved, . . and that . . all the land had escheated . . not disposed of during her life time: and the verdict was found accordingly."

Judgment thereon affirmed: I. free persons of color are entitled, under the laws of this state, to acquire, hold, and transmit real estate. a. [499] "it is certain that they are not aliens, . . [b.] The tenure by which we hold [land], is that of rendering service when required, and paying . . taxes . . This class of people do both—they are a part of our militia, required to perform the duty of pioneers and musicians—and on a late occasion, formed an efficient body in the construction of the works of defence for this city. They pay all the taxes which are imposed by the legislature on property, and an additional tax besides, and, when they are within the jurisdiction of the city, all the taxes imposed by the authority of Council. . . [c.] They have been permitted to hold land, from the time that they were permitted to obtain their freedom, and there are now thousands of them, in different parts of the State, who are in possession of such property. And although they have not, like the freed men of Rome, or Athens, become incorporated in the body politic, it has no doubt been the result of the mark which nature has put upon them. For where this has been obliterated, some have obtained, and now enjoy

[1] Second edition.

all the rights of citizens; some who have lost that distinctive mark, hold offices, as well as lands, and even seats in the legislature. My earliest recollections are associated with the knowledge of one of this description, who owned a plantation and negroes. . . [500] A recent occurrence in this court, shews how far many of them have lost the distinction of color. A man was brought to the bar for some alleged offence, and would have been tried as a white man, had not some objection been made to one of the witnesses, who, it was said, was a mulatto. Upon the refusal of the presiding judge to decide the question, on the appearance of the witness, testimony was produced as to her pedigree, from which it appeared not only that she was a mulatto, but that the prisoner was also one—upon which, he was turned over to another tribunal. Such instances are not rare—there are many such persons in the community, and many of them holding lands. . . [d.] positive enactments of the legislature [the acts of 1711 and of 1740] [501] recognized [them] as forming a part of the body politic; and if not citizens, they are subjects: . . [502] the acts of 1822 and '23 . . impose a tax on the real property of free people of color, . . [II.] But as the evidence produced to prove the relationship between the deceased and the traversers was not considered as satisfactory, . . they cannot take by descent from her" [Colcock, J.]

Dr. Wells v. Kinnerly, 4 McCord 123, January 1827. "Defendant hired his slaves to [persons] . . who called on plaintiff to attend them while sick,"

Held: "the physician should have charged the hirers"

Boyce v. Barksdale, 4 McCord 141, January 1827. "Adair was confined in the gaol, wherein the sheriff did not live nor any other person than a negro woman, a servant of the sheriff." He escaped.

Richardson v. Dukes, 4 McCord 156, January 1827. The defendant "discovered two negroes stealing potatoes from a bank which he had put up near his house; he shot at them with a gun loaded with buck shot," [157] "for he was determined to kill every rascal that came inside of his plantation." One of them, [156] "a negro of bad character" belonging to the plaintiff, was killed. "The jury found a verdict for the plaintiff for one dollar." Motion for a new trial. "In the course of the argument the verdict . . [was] attempted to be supported, on the ground that there were certain runaway negroes in the neighborhood . . who were committing murders and other outrages, which kept the country in such a state of alarm, as justified the defendant"

New trial granted: [157] "No such state of alarm existed in this instance," however.

Jennings v. Fundeburg, 4 McCord 161, January 1827. "The defendant . . was one of a party who went in search of some runaway negroes who had been very mischievous in the neighborhood. They were surprised in their camp, and as they fled the defendant fired towards them, . . only to intimidate and induce them to surrender." "soon after, one of them who belonged to the plaintiff, was found dead."

Held: the owner of the slave is entitled to recover his value.

Hough v. Evans, 4 McCord 169, January 1827. Action of deceit. "He had a chronic consumption . . the defendant said . . that he had only a cough, as all his other negroes had. . . would not warrant . . that any of them would live another day. Plaintiff was heard to say after the sale that he had bought a dead or sick negro, but that he would cure him with bacon. The price paid was $482, the value if sound." The negro died shortly after. Verdict for the plaintiff. New trial refused.

Lee v. Lee, 4 McCord 183, January 1827. [186] "His constant dress was . . a negro cloth short coat, . . He would sometimes send for all his negroes to throw dirt upon the roof . . to drive off witches. . . While he lived in Pedee swamp, he dwelt in a house worse than any of his negro houses. . . [188] he killed a negro [belonging to him, in Georgia], for which he fled from that state. . . [189] He purchased . . pine land . . and put his negroes there without a house or a hut on it."

Gardner v. Harden, 2 McCord Eq. 32, February 1827. [33] "Somerset was sent out of the state, and sold to strangers, and perished, by due course of law, for a crime to which he was exposed in his new situation." "hanged in the western country;"

Leverett v. Leverett, 2 McCord Eq. 84, February 1827. "The tenant for life died on the 25th . . of March 1824. Her executors . . kept these slaves on the plantation until they finished the crop of that year,[1] . . [85] 10th . . of January 1825, when the crop was gathered."

Held: no hire is due the remaindermen.

Heyward v. Glover, 2 McCord Eq. 395, March 1827. Will, 1814: "I give to my brother . . twenty-five negroes, to be drawn by lot, in families, out of the gang I got by my father's estate," The testator "directs, in order to prevent families from being separated, that if he drew more than twenty-five, he should make compensation for the surplus."

Young ads. Plumeau, Harper[2] 543, March 1827. Violet was sold in 1811 for $399. [545] "when she was sold in [April] 1824; she was between 45 and 50 years of age." [544] "Dr. Phillips . . attended this woman when she was in goal [*sic*]; . . he attended her from the 30th March to the 13th April . . just before she was to be sold, . . he thought that whilst she remained in that place she could not get well; . . [545] had consumption; . . the vendue master . . declared aloud, prior to the sale, that nothing but the property (title) was guaranteed; that estate sales were never guaranteed as to *soundness*; . . that the wench stooped, was very sickly, . . she said aloud whoever bought her would lose their money, as she had a sore throat, rheumatism, etc. . . [546] Violet appeared very much disfigured on the table; her dress was not regularly connected; she spoke hoarsely, and looked unsound; her teeth were filed, and she certainly was a diseased negro, in witness' opinion; . . Blaney . . was rude, agitated, and threatened vengeance against witness for bidding; . . that negroes, when about to be sold, sometimes disfigure themselves when they have a particular object in view. . . Michel . .

[1] Act of 1789. P. L. 494.
[2] Second edition.

bought her [for $315] for a constable in his office, (Blaney;) . . she had kept house for Blaney for two years previous. . . he . . kept a boarding house; . . [547] witness . . did not know . . whether Blaney kept her." She died in August.

Clark adv. McDonald, 4 McCord 223, June 1827. "The defendant was the captain of a steamboat, on board of which the negroes [a woman and her child] were sent as passengers from Charleston to Georgetown. The boat came to anchor in one of the creeks . . [and] when the tide ebbed, the boat rested partly on a bed of oyster shells, in consequence of which she filled with water, and the negroes being under deck were drowned."

Held: [225] "There is a radical distinction between the liability of a carrier with respect to the transportation of a slave and of a bale of goods." "She possesses the power of locomotion, shall he bind her in fetters or confine her in the hold of the vessel? This . . would expose her to greater danger in case of . . accident,"

State v. Wright, 4 McCord 358, November 1827. "The defendant was indicted for having received a stolen ring from a negro."

Held: I. a slave can commit a felony; II. a white person can be [363] "an accessary to a person of colour, . . [Otherwise] that description of persons may be made the instruments of murder, burglary, arson, and . . the most atrocious crimes, and the real offender escape with impunity." [Nott, J.]

Keckely ads. Commissioners, 4 McCord 463, April 1828. [465] "That . . his plantation lay partly in both parishes, . . [six] of his negro houses were . . in St. John's and four of them in St. James', his place of residence" [463] "That . . the board of commissioners from St. John's . . had fined him fifty-six dollars, . . for not making a return of the number of negroes under his management liable to work on the high roads.[1] . . that no notice had ever been given him"

Writ of prohibition granted, for lack of proper notice. Judge Johnson expresses his [470] "own conviction . . [that] his residence must be regarded as the residence of the slaves so immediately attached to him." That consequently, the slaves whose houses are in St. John's parish are not liable to do road duty in that parish.

State v. Shaw, 4 McCord 480, April 1828. "The defendant was the captain of a vessel which sailed from New Hampshire, and entered the port and city of Charleston with a negro cook on board." He was indicted in the city court, for bringing a free negro into the state contrary to the act of 1823, and convicted.

Indictment quashed: [482] "the offence was . . completed without the limits of the city, and the jurisdiction of it belonged to the circuit court."

Simpson v. Graves, Riley Eq. 232, April 1828. [235] "That deed embraced [the Devil's Elbow] Barony [consisting of six thousand acres].

[1] Act of 1825, sect. 11.

. . and also three hundred negroes. . . which were probably worth at that time one hundred and fifty thousand dollars,"

State v. Fife, 1 Bailey 1, May 1828. "Mr. Johnston, the owner of two slaves, . . sent them in the night time to the house of the defendant, each furnished with a piece of bacon, and with instructions to sell it to the defendant," who purchased both pieces.

Held: he was guilty of two distinct offences, and was indictable and punishable for each.[1]

State v. Westfield, 1 Bailey 132, December 1828. "an indictment under the 20th section of the act of 1740, commonly called the negro act,[2] . . for concealing and carrying away a slave, who had been accused of murder. . . [133] that his removal [beyond the state] had been effected by the agency of a person . . employed by the defendant for the purpose: . . verdict of guilty;" New trial refused.

Howard v. Schmidt, Rich. Eq. Cas. 452, January 1829. [453] "sale . . of the negro Bingo, (a boat hand,) . . [454] '1822. Due . . half of the packets *Eagle* and *Mary*—also half of the negroes Prince, Tartar, Henry and Sango'"

State, ex rel. Hon. William Johnson, v. Martindale, 1 Bailey 163, February 1829. "a suggestion for a prohibition, to restrain . . officers of the Charleston Neck Rangers, from enforcing the collection of certain fines [amounting to one hundred dollars], imposed on the relator, [by a court martial] for the non-performance of patrol duty[3] . . being one of the Associate Justices of the Supreme Court of the United States, . . [164] admitted, that as he was an inhabitant of the State, and the owner of slaves, he was liable according to the letter of the State laws . . but a claim to exemption was made, under the Act of Congress of May, 1792, 2 sec. . . which exempts the judicial officers . . of the United States from militia duty. . . that the exemption from militia duty extended to patrol duty," Judge Bay, "at Chambers," in 1821, refused the prohibition, holding [164] "that patrol duty was not a branch of militia duty, but a system of police, . . [165] no age, rank, or station afforded an excuse to the proprietor of slaves; . . a motion was . . made to the Court of Appeals, to reverse that decision."

Prayer for the prohibition, granted: I. [167] "patrol duty . . is not embraced in the power granted to Congress to prescribe a mode in which the militia shall be disciplined,[4] . . [but] [168] the duty which devolved on him as a Judge . . was paramount. . . [169] The patrol law imposes . . the duty of riding patrol at least once in every fortnight, and oftener, if the commanding officer shall think it necessary. This duty is usually performed in the night time, and consists in scouring the country, examining negro-houses and other suspected places, and inflicting corporal punishment on slaves found out of their owner's plantation,

[1] Act of Dec. 18, 1817. 7 St. at L. of S. C. 454.
[2] P. L. 168.
[3] Act of Dec. 18, 1819. 8 St. at L. of S. C. 538.
[4] U. S. Const., Art. I., sect. 8.

without a ticket, or some other lawful excuse. . . the United States . . may require his exclusive . . devotion to the duties of [a Judge of the Supreme Court] . . and it is wholly incompatible with these duties that he should, at any time, be called on to give his personal service in a local police regulation." [D. Johnson, J.] Colcock, J., dissented.

State v. Richard Scott, 1 Bailey 270, June 1829. "indictment, under the act of 1817, for trading with a slave without a ticket. . . found . . guilty. On being brought up for sentence, the defendant's counsel interposed an objection to the jurisdiction[1] . . that the defendant was a free person of colour, . . a mulatto, as would appear upon inspection;"

Motion in arrest of judgment, refused: [272] "matter *dehors* the record" is involved. The Court of Appeals cannot take [272] "upon itself to judge primarily as to matters of fact. . . If I were to judge from my own observation I should readily concede to the defendant the unenviable rank to which he aspires. . . [273] when the words 'negro, mulatto, etc.' are used in the act [of 1740, section 1] for the purpose of designating a *class*, they are to be interpreted by their common acceptation [[274] 'offspring of a black and a white'], and not by the rule *partus sequitur ventrem* [which 'was only intended to operate on the question of *slavery* or *freedom*']." [Johnson, J.] [274] "we have no evidence, at this time, that the defendant is a mulatto, except that he has made it a ground of appeal." [Nott, J.]

State v. Mary Hayes, 1 Bailey 275, June 1829. Report of Judge O'Neall: "the defendant was indicted and convicted of keeping a disorderly house. When brought up for sentence, I was satisfied from inspection that she was a mulatto. . . her father was a negro, but her mother was alleged to be a white woman. I refused to pass sentence, on the ground that she should have been tried by . . a Court of magistrates and freeholders, . . In order to be subject to the sentence of a Court of General Sessions, . . she should be . . a white woman, or an indian in amity with this State. It was not sufficient, that she derived her ancestry from a white mother. The African taint reduced her to the same degraded state, as if she were a free negro. . . [276] Under the Constitution of this State, could the son of a white woman, by a negro father, be allowed to vote? or be permitted to take his seat as a member of the house of representatives, or a senator?"

Motion [277] "for sentence on the defendant" refused. "This case is determined by that of the State *v.* Richard Scott," *supra.*

State v. Smith, 1 Bailey 283, December 1829. "The defendant . . was convicted [in 1821] under the act of 1754,[2] of stealing a slave, and received sentence of death; but was pardoned by Governor Bennett, on condition that he would remain in close confinement in the gaol . . [284] until the 1st of January, 1823, and would then, within fifteen days, leave the State, and never return to it."

[1] Act of 1740, sects. 9, 14. P. L. 165-167.
[2] P. L. 236.

State v. Benjamin Scott, 1 Bailey 294, December 1829. " the prisoner was brought before a Court of justices and freeholders . . and put upon his trial as a free person of colour, for negro stealing. He pleaded first to the jurisdiction . . that he was . . a free white citizen, . . and that fact being found against him, he pleaded . . that more than six days having elapsed, between his arrest and . . trial, the Court had no power to proceed . . determined in his favor . . committed him to gaol, to be further dealt with, . . next Circuit Court . . he was brought up by a writ of *habeas corpus,* . . [295] the presiding judge being of opinion that the Court of justices and freeholders had erred in point of law, on the prisoner's second ground of defence, . . ordered a writ of mandamus to issue, to compel the said Court . . to proceed to his trial on the merits."

[299] " ordered, that the proceedings of the Court of justices and freeholders be set aside, and that the order for the writ of mandamus be suspended . . in order to give the defendant an opportunity of applying for a writ of prohibition." [298] " it is very apparent . . that neither the prisoner, nor his counsel were willing to have submitted to that tribunal, the question, whether he was . . a person . . over whom the Court of justices and freeholders had jurisdiction; and that the proceeding by prohibition, to remove it to the superior Court, was not resorted to, on account of the absence of any precedent . . The question, whether the prisoner is intitled to be tried by a jury, . . or in the summary, and in some degree arbitrary manner, authorized by the act under which he was arrested, is, of itself, of little less importance than that of life and death." [Johnson, J.]

Kinloch v. Harvey, Harper [1] 508, January 1830. [509] " that . . Quico was charged with aiding in raising an insurrection in the District of Georgetown . . [510] that Charles Prioleau, a leader in the said insurrection, stated that when himself and another leader were devising the plan on a log in Georgetown . . in June or July last, . . Quico, or Quaccoo, was present with others on the same log, and when witness expressed a doubt of the possibility, all upon the log made answer, ' we can soon collect negroes enough to commence it, as there are ten blacks to one white.' They then appointed a meeting, [at which] . . they planned the mode of attack, to wit, where they were to assemble, who first to be killed, and how to follow up the work of death and plunder—none to be spared. . . at the time of the conversation on the log, he, the witness, expressed his fears of the other fellows betraying him; Quico said, ' we are all sensible men here, there is no danger.' . . Mood, the other leader . . proved that Quico was present on the log, as also Nat and Robert; the two latter . . denied that they had heard the plan of insurrection. . . Quico was apprehended on the last of July, or beginning of August . . the Court of Magistrates and Freeholders was not formed till the 12th . . of August . . [511] by reason of sickness or accident . . Besides . . it was discovered that so many were concerned in the plot . . that the public safety required this delay, in order to find out the ramifications . . counsel was refused permission to see Quico while in confinement, and all other per-

[1] Second edition.

sons, for fear of tampering with him," [510] "Quico was found guilty . . and instead of sentencing him to suffer death, he was sentenced to transportation beyond the limits of the United States, and if ever he should return, to be hanged." His owner moved [509] "for a writ of prohibition to restrain the . . magistrates and freeholders from carrying [the sentence] into execution"

Motion refused: I. [512] "It is true that the act of 1740 did require that slaves accused of capital offences should be tried within three days after their apprehension; and . . the act of . . 1754, . . limited [the time] to six days . . [513] nothing, however, in this act which says that magistrates and freeholders shall not proceed to the trial . . after the time limited . . left open to the discretion of the Court . . [II.] a matter entirely within their discretion, . . if they think proper to prevent persons of any description whatever, from visiting, or tampering, or advising with persons of that description, . . [III.] [514] the 12th clause of the act of 1740 . . gives the power to the justices and freeholders, to dispense with the common law rules of evidence entirely, by admitting of testimony, without oath, of Indians and slaves; . . [515] their consciences are made the rule of action, . . Their judgments are final. After all, it would be well if [they] . . would . . make the common law principles their rule of action, as far as they possibly can, as they are the best that human wisdom ever devised. . . [IV.] [516] Transportation . . may well be considered as a species of corporal punishment under the act [of 1740, sect. 17], . . Besides it was an act of mercy . . And I feel fortified . . by the usual decisions of the magistrates and freeholders throughout the State, for many years past, in banishing incorrigible offenders . . and in the practice of our governors, in pardoning slaves . . convicted of heinous offences, on condition of their being transported . . beyond the limits of the United States. The Court of Magistrates and Freeholders who tried the insurgents in Charleston, in 1822, . . sentenced to transportation beyond the limits of the United States, all . . who had merely consented to join in the plot, . . never to return again, under the penalty of death; . . and the second Court of Magistrates and Freeholders . . for the trial of fourteen other slaves, acquitted six, found eight guilty, but as so many lives had already been taken, they only ordered one for execution, (the ringleader,) but sentenced seven to transportation. . . [517] when the dreadful . . consequences of the insurrection of slaves in South Carolina, are taken into consideration, it appears to me, that the judges of the superior courts ought to be extremely cautious in interfering with the magistrates and freeholders . . and that they ought not to be eagle eyed in viewing their proceedings, and in finding out and supporting every formal error or neglect, where the real merits have been duly and fairly attended to, and determined according to justice." [Bay, J.]

Williams v. Inabnet, 1 Bailey 343, January 1830. "a tract of land, sold by the defendant, as agent of a free negro named Batch."

Barber v. Anderson, 1 Bailey 358, January 1830. "The period of hiring [the negro girl] expired on the 14th Dec. . . the defendant [said that he] . . had given her a pass, and sent her home. . . disappeared."

Held: [361] "If the power of volition be relied on as a reason why they may be returned in this way, . . it is obviously a two-edged sword, . . they may go elsewhere."

Myers v. Myers, Bailey Eq. 23, January 1830. [28] "It was a general rule, formerly, in the Court of Equity, to allow ten pounds, sterling, which is between forty-two and forty-three dollars for the annual labour of a slave. But since the introduction of the culture of cotton that rule has been abandoned, and certainly ought not to be resorted to for any short period of service, where the value of the labour can be ascertained by more certain evidence." [Nott, J.]

Hoover v. Alexander, 1 Bailey 510, May 1830. Action of trover. A slave owned by defendant's father had been sold by the sheriff. After a few days the slave ran away from his new master "and was seen for some time lurking about a place rented by the defendant, . . He was seen a few times . . at work in the defendant's cotton-patch, but the defendant was not present . . He was also seen once or twice in company with defendant, but was not then at work. . . an elder brother of the defendant, who lived in Georgia, and to whom their father had bequeathed this slave . . seized him and took him out of the State." Nonsuit.

Howard v. Williams, 1 Bailey 575, May 1830. On the birth of Harriet, [576] "he gave her to his daughter, . . only twelve or thirteen years of age."

Madden v. Day, 1 Bailey 587, May 1830. [588] "he had given to each of his children, a small negro."

Dr. John L. Felder v. Hon. William Johnson, 1 Bailey 624, June 1830. "an account for medical services, rendered . . to the slaves of the defendant [an associate judge of the Supreme Court of the United States]."

Lenoir v. Sylvester, 1 Bailey 632, June 1830. Will of William Wright, dated January 5, 1808: [634] "I lend the whole of my estate . . unto my wife, . . during her natural life; and after her death . . I give Leah, Esther, and Letty their freedom." He nominated his wife executrix, and Wright and Dinkins, executors; "and appointed them guardians of the slaves to whom he had bequeathed freedom. . . the widow . . qualified as executrix, . . March, 1808; and shortly afterwards captured the slaves abovementioned, under the act of 1800,[1] as slaves emancipated contrary to the provisions of that act. . . Mrs. Wright . . died on the 8th October, 1828, at which time her crop was made, but not picked out; and on the next day, the defendant . . captured the slaves, under the act of 1800:"

Held: I. [640] "no capture could be made [by her or by another] during her life estate; . . [641] her possession . . for the purpose of finishing [the crop][2] . . might have continued to the last day of December . . the defendant was liable as a trespasser; . . [II.] [642] the act

[1] 2 Brev. Dig. 255-256.
[2] Act of 1789, sect. 23. 1 Brev. Dig. 335.

of 1820 prevented their emancipation, at her death in 1828. . . The will . . is not . . to be regarded as bequeathing a legacy to persons, who can take it; but as merely directory to his executors to do an act, on a particular event, which was then to confer freedom . . the slaves had no rights, to be defeated by the act of 1820. . . [643] The intention of the testator is . . defeated by the fact, that his executors, at the time fixed to carry it into effect, have no power legally to accomplish it." [O'Neall, J.]

Smith v. Rice, 1 Bailey 648, June 1830. [649] " she was discovered to be diseased with gonorrhea, and was placed in the hands of a physician for cure."

State v. M'Kee, 1 Bailey 651, June 1830. " declaration by the foreman [of the jury] . . that he ' would not convict the defendant, or any other white person, of murdering a slave.' "

State v. Sims, 2 Bailey 29, December 1830. " The defendant was indicted for the murder of his father, . . The deceased was found shockingly mangled and butchered in his own house; and suspicion having attached to certain slaves, they were arrested, and upon their own confessions convicted of the crime by a Court of Magistrates and Freeholders, and shortly after executed. At the trial of the present indictment, the record of the conviction of the slaves, and . . their several confessions were admitted in evidence;" [35] " John [one of the slaves] . . was armed with a knife and stationed at the door to keep persons from coming in." [29] " a mass of circumstantial testimony was introduced . . verdict of guilty [as accessory before the fact]"

Held: the record of conviction of the slaves and their confessions were properly admitted in evidence against the prisoner.

State v. Taylor, 2 Bailey 49, December 1830. " The defendants had been convicted of unlawful trading with a slave, under the act of 1817; and were now indicted under the act of 1829, for receiving goods stolen by a slave. Both charges were founded on the same act [of the defendants];"

Held: [50] " two distinct offences were committed."

State v. Crank, 2 Bailey 66, January 1831. Indictment for the murder of the father of the prisoner. [76] " The proof warrants the conclusion, that the blows which the prisoner said he heard, and which it is too probable he saw, and did not prevent, were only the deadly blows which the slave inflicted on his parent, while calling the unfortunate parricide to his rescue; and that it was a deliberate and savage murder, without even the excuse of a blow from the master or father." [67] " The jury found a general verdict of guilty," Motions in arrest of judgment and for a new trial refused.

Rice v. Sims, 2 Bailey 82, January 1831. " In November, 1823, the plaintiff hired two negro fellows to the defendants, who were engaged in the boating business, and were to pay wages . . at the rate of $16, per month for each; payment to be made by boating the plaintiff's cotton to market, at the freight of $2,50 per bale."

Helton v. Caston, 2 Bailey 95, January 1831. "action of trespass for cruelly beating the plaintiff's slave. . . that the slave, who was a female, had been hired to the defendant for twelve months, under a stipulation in the contract, that he was not to beat or abuse her; and that she was severely beaten by the defendant, and in consequence returned to her master. . . the jury found for the plaintiff."

Held: [100] "trespass was the proper remedy." [98] "in this State, where slaves are a more valuable part of our property, than even land, . . and where the hiring of them is analogous to the renting of land, . . it is but reasonable . . to transfer the principles applicable to leases of lands, to contracts for the hire of slaves." [O'Neall, J.]

Linam v. Johnson, 2 Bailey 137, January 1831. Action of trover. In 1818 Bill Brock, a negro slave, was transferred to the plaintiff, by a formal bill of sale, in consideration of the sum of $900, of which $300 was paid in cash. [138] "that Bill had, ever since the sale, dealt and trafficked as a free man: that he was regarded as such in the neighbourhood from that time, and had been enrolled as a pioneer in the militia: That the land on which he lived was known by the name of Bill Brock's place, although it belonged to the plaintiff; and that Bill had, to all appearance, cultivated it for his own benefit. . . that Bill had been permitted to hire his time and work for himself, . . that he was industrious and provident, and had accumulated money. It seemed probable, from the testimony, that Bill had advanced the cash part of his purchase money; and the plaintiff admitted, that when he took the bill of sale, he gave it up to Bill for his protection. . . Tucker . . testified, that in . . 1822, he had, at the request of Bill, stated an account between him and the plaintiff, for the balance due the latter on the purchase of Bill; that Bill's discounts amounted to $1300, and there was a balance due to him on the account by the plaintiff. . . The witness considered Bill a free man from that time; and it appeared that from that date he had paid the poll tax levied on free persons of colour. In 1823, the defendant became the guardian of Bill Brock, as a free man of colour, conformably to the provisions of the act of 1822. In 1824 the plaintiff demanded Bill from him, and upon his refusal brought this action. The jury . . [139] found for the defendant;"

New trial refused: [140] "the provisions of the act of 1800, authorizing the seizure and conversion [of a slave illegally emancipated], were not repealed by the act of 1820, . . [141] Bill . . was . . a slave, without an owner, and cast upon society as a derelict, which . . any one might appropriate . . The defendant has, at most, done no more, and that with the humane view of giving effect, as far as he could, to a contract which the plaintiff had himself made, upon most ample consideration, and which he now seeks to avoid." [Johnson, J.]

Groning v. Devana, 2 Bailey 192, February 1831. Held: a free person of color is not a competent witness in any case in the courts of record of this state, although both the parties to the suit are of the same class with himself; nor can book-entries, made by a free negro, be received in evidence, on the oath of a white person to his handwriting.

M'Dowall v. M'Dowall, Bailey Eq. 324, March 1831. Will of John M'Dowall, dated 1819: [325] "to his wife . . the use of the fellow Tom, and washerwoman Mealy, during her life only, and at her death, the said slaves to be set free from their mistress." Tom was sold by the testator in his lifetime.

Shearman v. Angel, Bailey Eq. 351, March 1831. Will of Isaac Waight Tucker, "made in 1814, . . directing several of his slaves to be emancipated, and bequeathing to them . . one thousand dollars,"

Ex parte Tunno, Bailey Eq. 395, March 1831. "1823, on the petition of Martha Patience Morton, a free woman of color, the widow of Joseph Morton, . . and of . . one of the grand children . . a decretal order . . was made . . real estate was directed to be sold . . and the proceeds [$2,200] paid over to . . trustee, who invested . . paid the interest and dividends . . to . . Martha . . [396] she had recently died, . . [the granddaughter] and her children . . resided at Philadelphia, . . prohibited by law from coming into this State, they were desirous that the trust fund, should be transferred . . Isaac Norton . . a gentleman of great respectability residing in Philadelphia, [had consented] to undertake the trust;"

Held: "the prayer of the petition ought to be granted; . . [397] the *cestuys que trust* are perpetually exiled from South Carolina, and can never enjoy the trust here." [O'Neall, J.]

Miller v. Mitchell, Bailey Eq. 437, April 1831. [438] "The testator [E. N. Frisk], who died in 1812, . . directed his executor to purchase, and emancipate, a negro woman named Amy, to whom he bequeathed the residue of his estate. . . [439] $1,000, were paid by the executor for the negro woman, Amy, who was emancipated;"

Lord v. Lowry, Bailey Eq. 510, April 1831. [511] "put four slaves on the land to cut wood;"

Hart v. Edwards, 2 Bailey 306, May 1831. "At the sale, the slave looked very ill, and the auctioneer gave notice, that 'he had had the venereal, but was well or nearly well.' The defendant purchased at four hundred and sixty dollars, which was stated to be a fair price, supposing the slave to be convalescent; . . [307] if he had never had the disease, . . worth thirty or forty dollars more. The slave died seven days after, of a fever superinduced by the disease, or by an improper treatment of it." Held: "if he thought proper to purchase, without a warranty against . . consequences [of that disease], he is bound by it."

Ex parte Jesse Brown, 2 Bailey 323, May 1831. "A slave had been tried and convicted by a court of magistrates and free-holders, and sentenced to be whipped; and the sentence was executed. He was subsequently tried and condemned to death for the same offence; and Mr. Justice Richardson . . granted a prohibition to restrain the execution of the sentence. . . his decision was confirmed, unanimously, in the Court of Appeals."

State v. Fife, 2 Bailey 337, May 1831. "Fife had been prosecuted for two distinct acts of trading with slaves; . . [338] was convicted,

and sentenced to pay a fine to the State of two hundred dollars in each case."

Johnson v. Lemons, 2 Bailey 392, May 1831. [393] "plaintiff had caused the defendant to be indicted, under the act of 1821, for harbouring" his fugitive slave.

Held: he could not afterwards maintain an action for the services of the slave during the time he was harbored.

Gee v. Hicks, Rich. Eq. Cas. 5, May 1831. In 1816 [14] "the slaves . . were also to be removed, and for them she was liable to account for as much hire as could be obtained in Mississippi, which she could not expect to realize in South-Carolina. . . he promised to pay his aunt . . as much hire for her slaves as she could obtain in Mississippi."

Bacot v. Parnell, 2 Bailey 424, June 1831. "The slave died within the year [for which he was hired], and the defendant claimed a proportionate deduction for the amount of the note," Held: [425] "the hirer is bound to pay, only . . the hire . . until the slave's death."

State v. Baldwin, 2 Bailey 541, December 1831. Defendant had been convicted on an indictment under the act of 1817, for trading with a slave without a ticket, and had paid his fine into the hands of the sheriff. [542] "a moiety of the said fine was claimed by the members of the Vigilant Society of Stateburg, as informers."

Held: [543] "The act of 1817 . . makes no alteration of the act of 1796[1] . . as to the rights of the informer. The provision made by it in favour of him, is still a subsisting law."

State v. Davis; State v. Hanna, 2 Bailey 558, December 1831. "indictments under the bastardly act of 1795,[2] . . In each case the mother of the bastard, on being offered as a witness, was objected to on the ground that she was a mulatto; . . trial of the fact by a jury. In each case the jury found the mother to be a white woman, . . accordingly admitted . . as a witness. At the trial of the indictment, the objection to the colour of the mother was, in each case, again relied on as a defence; the act of 1795, being applicable only in the case of a white woman . . The jury . . found each of the defendants guilty;"

New trial granted: [559] "There is no legal definition of the term [mulatto] . . error in the Judge's charge . . in the first of the cases . . 'that a mulatto was the offspring of parents, one . . white, and the other black,' and that he 'was disposed to think that where the white blood predominated, this disqualification ought not to attach.' . . It is certainly true, as laid down by the presiding Judge, that 'every admixture of African blood with the European, or white, is not to be referred to the degraded class.' It would be dangerous and cruel to subject to this disqualification, persons bearing all the features of a white, on account of some remote admixture of negro blood; nor has the term mulatto, or person of colour, I believe, been popularly attributed to such a person. . . where there is a distinct and visible admixture of negro

[1] 2 Faust 91.
[2] *Ibid.* 74.

blood, the person is to be denominated a mulatto, or person of colour. . . a question very proper for a jury . . [560] they may have the evidence of inspection . . of reputation as to parentage; and such . . as was offered in the present case, of the person's having been received in society, and exercised the privileges of a white man [woman?]. In Louisiana, as I understand, and by the *Code Noir* of France for her colonies, the descendant of a white and a quadroon . . is accounted a white. Perhaps it would be desirable, that the Legislature should adopt some such uniform rule here. The rule may be of use to juries—not as a rule of law, which we have no authority to declare it, but as being founded on experience, and conformable to nature. . . In the case of Hanna, . . the witness was a quadroon, and such an one is clearly . . a mulatto, or person of color." [Harper, J.]

State v. Ridgell, 2 Bailey 560, December 1831. A slave had been [561] "guilty of breaking open the store-house . . and stealing from it certain goods. This store-house was at the distance of 100 yards, and more, from the dwelling house, was separated from it by a public road, and was not used as a place for sleeping by any person at the time when it was broken open." A court of magistrates and freeholders "had, nevertheless, convicted the slave of burglary, and passed sentence of death on him accordingly." A prohibition was granted [560] "to restrain the execution"

Johnston et ux v. Barrett, 2 Bailey 562, December 1831. "The defendant had left the slave in charge of his brother, who, in anticipation of the confinement of the slave, had directed her to engage the services of a coloured midwife, designating one or two to whom she might apply: but the woman engaged the services of the plaintiff's wife, by whom she had been attended on a former occasion. The latter did not communicate with the defendant, or his agent, on the subject; but it appeared in evidence, that it was not usual to communicate with the master in such cases. She was afterwards sent for during a dark and stormy night in January, and on her arrival found the slave very ill. . . [563] rendered the assistance, requisite . . The plaintiffs demanded $10, . . the usual charge. . . [But] the usual charge of coloured midwives was only $4; and the defendant offered to pay five dollars. The Magistrate was of opinion, that the plaintiffs were intitled [*sic*] to recover the whole of their demand. The slave cannot, it is true, bind the master by a contract, made without his knowledge or consent; but here was a case in which the life of the slave was in great danger, and was probably saved by means of the services rendered by the plaintiff's wife. . . it was [the master's] . . own business to look to it, and to see that the requisite assistance was at hand, when it was needed. As he had not done so, he was bound to pay the price of the plaintiff's services." Affirmed by the Court of Appeals.

State v. Covington, 2 Bailey 569, January 1832. "indictment, under the act of 1754,"[1] [570] "the prisoner and the negro set out, and went the distance of twenty-five or thirty yards, in the prosecution of an in-

[1] P. L. 236.

tention, on the part of the prisoner, to inveigle the negro from the service . . of the master; but were prevented from proceeding further by the persons lying in wait. . . [571] The owner, or rather his family in his absence, . . knew of, and had assented to the negro's meeting the prisoner, and arranging with him their plan of elopement, and moving forward in the execution of it; "

Held: [573] " Every act of the prisoner proceeded . . without any agency on the part of the owner . . His not preventing . . when he knew of it before hand, is not evidence of the assent of his will, . . only an apparent assent. The act was therefore *invito domino*, and constituted felony." [Johnson, J.]

Farr v. Sims, Rich. Eq. Cas. 122, January 1832. [126] " in 1813, he made a formal gift and delivery of a girl to his daughter, putting her hand into that of his child. . . The girl, however, remained in possession of the father, . . [who] paid taxes for her."

Held: [139] " gift . . void against subsequent creditors, without notice."

Towles v. Burton, Rich. Eq. Cas. 146, January 1832. [147] " He bequeathed one slave, to whichever of his children the slave would choose for a master or mistress. . . [155] The slaves were appraised and placed in [four] different lots with the valuations." [152] " the names of the slaves were placed on four different papers. . . [155] The lots were drawn for. . . [156] heard the old man say, his black people would not go out of the family."

State v. Mazyck, 3 Richardson 291, March 1832. "A mare was brought before [a justice of the peace] . . which had been seized by . . Norwood, as the property of a slave belonging to . . Mazyck. Mazyck had notice . . and . . that . . the justice . . had ordered her to be sold as forfeited, under the Act of 1740[1] . . [but] refused to take the oath prescribed by the statute . . went to Norwood [to whose keeping the mare had been committed], . . carried away the mare,"

Held: [295] " The remedy by action is . . perfect; . . an indictment will not lie."

Hellman v. McWhennie, 3 Richardson 364, March 1832. " action of trespass for beating a slave, . . The plaintiff had a verdict,"

Jaudon v. Gourdin, Rich. Eq. Cas. 246, March and April 1832. [247] " The Sheriff had seized two of the negroes, which were lodged in jail, and a Commissioner was proceeding to sell them,"

Tidyman v. Rose, Rich. Eq. Cas. 294, March and April 1832. " By a marriage settlement . . 1793, the estates of Mrs. Carne were settled to the use of the intended husband and wife, during their joint lives, remainder to Mr. Coffie for life—remainder to . . persons . . Mrs. Carne, by . . will, . . might . . appoint. . . By her last will, . . 1805, . . ' I give . . to my niece, Mrs. . . Tidyman, . . Elsy, and her two children, Mary and Syphax.' All the [other] negroes, . . ' and all the issue . . of the female slaves,' she gave to her son, . . [295] in . . Great Britain, . .

[1] P. L. 171.

Mrs. Coffie died soon after . . Mr. Coffie . . died in . . 1830. During his life, a son of Elsy, . . Joe, and two children of Mary . . were born, who are [now] . . of mature age;"

Held: Joe and the children of Mary go to Mrs. Coffie's son. [300] "it might be inferred from [Haynesworth *v.* Cox[1] and Gayle *v.* Cunningham,[2]] . . that though the children were grown up, . . all must pass under the bequest of the female ancestor." [297] "they involve a departure from the most firmly settled principles, and constitute an anomaly in our system, . . we . . dissent . . [301] nothing shall pass, which was not intended to be given. Considerations of humanity might be of weight in a doubtful case, but . . I cannot regard this as [such] . . little that legal decisions can do to enforce humanity: this must depend on public opinion, and I do not fear that a single infant will be left to perish by being prematurely separated from its mother, in consequence of our present determination." [Harper, J.]

Alexander v. Maxwell, Rich. Eq. Cas. 302, March and April 1832. [307] "The certificate of Bee and Carter . . stating sales by them of several gangs of slaves, in 1823 and 1824. In 1823, they sold slaves at different times, average, $268; in 1824, . . average $299. Statement by Commissioner in Equity: in 1824 he sold 83 slaves, average, $261 59; in 1825 he sold 117 slaves, average, $257 22. The credits were short. . . Mr. Gantt testified of a sale in February or March, 1824; slaves of . . estate; . . a third or fourth cash, and balance in one, two, three and four years—average, $210; . . about ordinary price; slaves sold low then. . . has since sold some slaves, at an average of $300."

Fraser v. Goode, 3 Richardson 199, May 1832. [200] "She was the wife of Allen's fellow, and sold with him to pay the debt;"

Antonio v. Clissey, 3 Richardson 201, May 1832. [203] "that the negro was a blacksmith, and that, on this account, he had agreed to give . . a very high price, and that the negro was sick and unable to work more than a month, and as much as two weeks at one time,"

Held: [204] "all that the owner undertakes is that he is . . sound [at the time of hiring]. He who hires must take the chance of his remaining so; an abatement has been allowed in the case of the death of a negro hired, but that was pushing the matter far enough" [Johnson, J.]

Minter v. Dent, 3 Richardson 205, May 1832. "That plaintiff on the day of sale represented them as a prime gang of [forty] negroes, the pick . . of about two hundred. When this particular negro was about to be sold, . . Dent asked Minter as to her capacity, etc. . . Minter said he had lately bought her in Alabama, . . could not say anything of her of a definite character. . . [206] She was stout, . . and looked hearty. A slight examination of her countenance would convince any one that she was not a 'bright negro, but no one would suppose her to be an idiot' . . Negroes sold rapidly and high, . . women generally . . for about $350. . . this negro was set down to the defendant at $300. She was sold the next day for $173, in presence of defendant, who refused

[1] P. 329, *supra*.
[2] P. 314, *supra*.

to comply" The plaintiff brought suit to recover the difference. "The defendant . . proposed . . to shew that this negro . . was valueless. . . not . . received . . plaintiff had a verdict," New trial granted.

Robertson v. Woodward, 3 Richardson 251, May 1832. [252] "That in January, 1822, Dinah being run away, . . he [about to go west] . . told witness to take Dinah and hire her out."

Arnold v. Loveless and Taylor, 6 Richardson 511, May 1832. "a sum. pro. to recover the penalty of $50 on any one who shall whip a slave with a ticket, imposed by the Act of 1819." Held: [512] "Each should have been sued severally."

State v. Harden, 2 Speers 152 n., Spring 1832. "The offense was committed on the person of a free negro, whom the defendant, on some pretext, (for no provocation was proved,) first beat in the street, giving fifty or sixty blows with his fist, and a stick or cowhide; and then deliberately tied him, carried him out into the woods, near the village, stripped him, and gave him, on the bare back, ninety-three lashes. He was much abused, his back was severely cut, and the blood flowed freely. He fainted, or fell down under the infliction. The testimony was altogether that of white men, who witnessed it; nor did the negro appear in court. . . He was known throughout the country as free Tom Archer, and had been for ten years and upwards. . . The defendant was convicted,"

Motion for a new trial dismissed: I. [154 n.] "to no white man does the right belong of correcting, at pleasure, a free negro. . . [155 n.] The only difference in the law, as to indictments for assaults and batteries on free white men and free negroes, seems to me to consist in the different justification which would excuse an assault and battery on the one or the other. Free negroes belong to a degraded *caste* of society; they are, in no respect, on a perfect equality with the white man. . . they ought, by law, to be compelled to demean themselves as inferiors, . . words of impertinence . . addressed by a free negro, to a white man, would justify an assault and battery. As a general rule . . whatever, in the opinion of the jury, would induce them, as reasonable men, to strike a free negro, should, in all cases, be regarded as a legal justification in an indictment. . . [II.] [156 n.] From a negro born free, or manumitted before the Act of 1800, no such proof [deed of manumission] could be demanded, . . Proof that a negro has been suffered to live in a community for years, as a free man, would, *prima facie*, establish the fact of freedom." [O'Neall, J.]

Smith v. Henry, 1 Hill 16, January 1833. [20] "The value [in 1824] was proved at $275 to $300, and hire at $15 or $20 per annum for the girl alone. She might be worth hire, although the family, a woman and children, might not."

State v. Davis, 1 Hill 46, January 1833. "Robertson [deputy sheriff] found the [mortgaged] negro at Hamburg, and took him into his possession; and having occasion to stop, for the night, on his way . . when he went to bed he chained the negro to his bed-post, and . . tied the negro with a rope, one end of which was tied to his own body. The defendants [who claimed the negro] came to the house at night, . . broke the chain, cut the rope, and carried the negro off,"

Terry v. Hopkins, 1 Hill Eq. 1, January 1833. [6] "Booker did take Will back, and put in his place a negro called Phill, who on being chastised a few days after, by the overseer, ran away and returned to Mr. Booker."

Hinson v. Pickett, 1 Hill Eq. 35, January 1833. [37] "sent the . . negroes to the western country . . to avoid the claim"

Cabeen v. Gordon, 1 Hill Eq. 51, January 1833. Will, 1801: "bequeathed to his daughter, Mary . . a negro . . Jane," [54] "allowing the first child of . . Jane (if any) to my daughter Nancy . . and the second (if any) to my daughter Betsey."

Haigood v. Wells, 1 Hill Eq. 59, January 1833. Will, 1821: "directed his executors to keep the negroes on the plantation, for the support of the family, until his youngest child should come of age . . then . . equally divided among his children;"

Lyles v. Lyles, 1 Hill Eq. 76, January 1833. Johnson, J.: [87] "In some of the old cases, . . negro hire was rated at £10 for full task hands, and £5 for half hands. In the prosperous times which succeeded the late war, . . the Courts departed from this rule, and much higher prices were allowed in some cases, but . . since the present organization of the Court, the rule was resumed . . my own experience . . is, that it is as much as in general they are worth; and I . . subjoin . . an estimate upon which it is founded." Note: "by inquiries amongst the most . . successful planters of the middle and up-country, . . data . . collected, . . The first object of the planter, is to raise a sufficient supply of provisions and forage for family consumption, and no more. In the middle and up-country, the usual habit is to clothe the negroes by the labor of the females, at times when they can be conveniently dispensed with in the field; and upon lands of medium quality, two bags and a half of cotton of three hundred pounds per task hand, is regarded as a good crop, taking a series of years together, and my own experience is, that this is a high average. . .

	Dr.	
The planter, for 2½ bags cotton, of 300 lbs, each, at 12½ cents,.		$93 75
	Cr.	
Overseer's wages per hand,.....	$10 00	
Land rent, say 12 acres, per hand, at $1 50,.....	18 00	
Horse hire, per hand,.....	5 00	
Wear and tear of working tools . . etc.....	5 00	
1 blanket, $2; 1 pair shoes, $1 25,.....	3 25	
Taxes, $1; physician's bill, $2,.....	3 00	
Bagging, rope and twine, $1 per bale,.....	2 50	
Freight, per bale, $1,.....	2 50	
Commissions on selling cotton, 2½ cents pr. cwt.,....	2 29	
		$51 54
		$42 21
Negro hire, £10 = $42 86.....		42 86
Against the planter,.....		$ 65

Salt and other little articles of expense, which force themselves upon the humane master, . . are intentionally omitted,"

Nowell v. O'Hara, 1 Hill 150, April 1833. [151] "the plaintiff executed a bill of sale for William [alleged to be worth $800], . . consideration . . $400, . . 'William to be taken out of the State. . . defendant had been offered $500 . . without a condition, . . But . . sold him for $450 to . . Vincent, . . for . . St. John, of . . Georgia, . . who . . did not conceive himself bound to keep him out of the State, and sent him back, and Vincent, his agent, bought him and keeps him here. . . The jury found . . 'that the defendant did not use precautionary measures to prevent the return . . find for the plaintiff one hundred dollars damages.'"

Motions for nonsuit and new trial, dismissed: "The owners of slaves frequently send them off from amongst their kindred and associates as a punishment, and it is frequently resorted to, as the means of separating a vicious negro from amongst others exposed to be influenced and corrupted by his example. It is therefore common to require of the purchaser of such a negro, that he shall carry him out of the State. . . [152] This contract . . implies a further undertaking, that he should be domiciliated out of the State."

Sausey v. Gardner, 1 Hill 191, April 1833. [193] "the negro Phillis allotted to . . the wife of . . Sausey. . . Sausey declined taking her from her mother, on account of her tender years, but left her with . . the executor . . made him his agent to hold the slave for him,"

Lance v. Barrett, 1 Hill 204, April 1833. Dr. Daniel, of Savannah, employed the plaintiff "to purchase negroes for him, . . He was instructed to buy none but sound negroes accustomed to the swamp, and not to buy any of Graves'. The plaintiff, however, did purchase seven . . of Graves' . . Dr. Daniel . . refused to receive them. Four . . died soon after . . of diseases existing at the time of the purchase."

Motte v. Schult, 1 Hill Eq. 146, April 1833. "a seizure of the mortgaged slaves, and sold them . . except one who died in jail before any sale was effected."

Frazier v. Vaux, 1 Hill Eq. 203, April 1833. "laid out the surplus income of the estate in negroes, . . 1822, bought . . twenty-five . . on credit, at $500 per head."

Drayton v. Grimke, 1 Hill Eq. 224, April 1833. Will: "I . . bequeath my driver Dick, and his family, to wit, his wife and children; also my [three] carpenters, . . and my house servants, George [a coachman] and Daniel, with the future issue of the females, from this date, to my son" [227] "Dick, at the date of the will, had children by former wives then dead,"

Held: "The testator . . obviously intended only the wife then living . . and the issue of their cohabitation,"

Magwood v. Johnson, 1 Hill Eq. 228, April 1833. [229] "Negro cloth, . . $234 62 . . [230] the trust property has been sold . . except . . a few old and useless slaves;"

Chastain v. Bowman, 1 Hill 270, May 1833. "The boat was passing down the [Savannah] river, when the plaintiff came to a landing and asked if it could carry his cotton. The patroon (a slave belonging to one of the defendants) answered that it could. The cotton was received and was burnt on board the boat before it reached Augusta. It was proved that the defendants had given general instructions to their patroons to take in freight whenever it could be had, . . [271] The jury found for the plaintiff"

New trial refused: "a master may constitute his slave his agent, and . . [there is no] distinction between the circumstances which constitute a slave and a freeman an agent—they are both the creatures of the principal, . . There is no condition, however degraded, which deprives one of the right to act as a private agent"

Hobson v. Perry, 1 Hill 277, May 1833. "Sum. pro. in trespass for shooting a mare. . . although fed by the plaintiff, and used by him as his other horses, [she] was in fact owned by his slave. She broke into the defendant's field, . . and he shot her."

Held: "That the possession of the plaintiff was sufficient to enable him to maintain this action . . that the fact of ownership by a slave is not *ipso facto* a forfeiture under the act of 1740,[1] . . forfeiture . . is not complete, until seizure and condemnation."

Meacham v. McKie, 1 Hill 374, December 1833. "The defendant, as administrator . . had a sale of his intestate's effects, among which were a negro man and his wife. The plaintiff purchased the man; and when the woman was offered for sale and was on the point of being bid off by a stranger, the defendant (who is the plaintiff's father-in-law) urged him to buy her. He replied that he was not able: upon which the defendant promised if he would buy the negro that he (defendant) would give him one hundred dollars. The plaintiff accordingly bid off the negro,"

Held: "sufficient consideration to sustain the defendant's promise."

Rye v. Stubbs, 1 Hill 384, December 1833. "plaintiff declared in assumpsit, 'that, in consideration the plaintiff would oversee the hands of the defendant . . he would give the plaintiff one-eighth part of the produce raised.' . . [Defendant] [385] said . . that plaintiff was to work as a hand in the crop;"

Farr v. Farr, 1 Hill 393, December 1833. "a charge of one hundred dollars, which the defendant . . had agreed to pay him for going to Tennessee, for a runaway negro."

Perry v. Dunlap, 1 Hill 401, December 1833. "The defendant hired, from the plaintiff, a negro man to attend his ferry [[403] 'partially employed in the field'] for one year, . . and, after the negro had been in the defendant's employment about eight months, the sheriff levied on him and detained him in his custody about nine weeks, when the plaintiff paid the execution, and then tendered the negro again to the defendant, who refused to receive him."

[1] P. L. 171-172.

Held: [402] "the plaintiff is not entitled to recover [hire for the time the defendant had the negro]. . . the hiring was for the entire year."

Caston v. Ballard, 1 Hill 406, December 1833. "a negro woman and her children . . were the property . . of Col. Thos. Ballard, until . . 1821, when he delivered them to Samuel Caston, . . They remained in Caston's possession until 1830, (Col. Ballard meanwhile having removed to Georgia) when they ran away and went to Col. Ballard,"

Cline v. Caldwell, 1 Hill 423, December 1833. Report of Judge O'Neall: "Action of trover . . The plaintiff was a free mulatto woman, descended from a white mother: she purchased John, (who was her husband) from Cato Gallman, a free negro. John . . belonged originally to Jacob Clay, who sold him in 1822, to . . Setzler, for $650: John advanced $300 of his price, and Setzler paid the balance, $350. The understanding was, that he was to be free when the balance was paid. He sold him to . . [424] Kinard for $200, who said on his examination, that he bought without any understanding that John was to be free. He sold to . . Glymp, for the same sum, who said that if John stayed with him until he worked out the $200, he was to be free; if they disagreed, he was to get another man to buy him. He kept him near two years, and sold him back to . . Kinard: there was about $100, balance, due on his price. Mr. Kinard, however, stated that he gave $160 for him. In 1824 or 1825, he sold him to George Suber and . . Dawkins, each paid a part of his price. . . Dawkins sold his half . . to Solomon Suber, who took him into possession, and in May, 1827, sold his half to . . Caldwell, for $250. . . September, 1827, . . Caldwell and George Suber conveyed [John], by bill of sale, in consideration of, I think, $500, . . to Cato Gallman. The witness . . saw no money paid, but the sellers, the purchaser and the slave, were all present—that he made the settlement and calculations between them: the balance due Caldwell, on account of John's price, was $60, to pay which John was to remain and work until the next spring, which he did. . . [then] left . . Caldwell's possession, . . and was . . acknowledged slave [of Gallman], until he sold to the plaintiff, who had possession in Abbeville and also in Georgia, to which place last she and John removed. . . March, 1828, . . Caldwell conveyed his interest, (a moiety) in John, to his brother Samuel, in consideration of natural love, . . Samuel is dead: his widow administered, appointed the defendant her attorney, who went to Georgia, and with the assistance of [two other men] . . seized and brought off . . John. In February, 1828, . . [425] Samuel Caldwell knew of his brother's conveyance [of John] to Cato Gallman, . . At the close of the plaintiff's case, a motion was made for a non-suit, . . that neither Elizabeth Cline nor Cato Gallman (being free negroes) could own slaves. . . refused . . As free persons, they could . . own property, . . no restriction . . as to their acquisition of slaves. . . I said to the jury, . . I. [426] The act of 1820, does not declare a deed absolute on its face, but intended as a covert emancipation void: . . Until actually emancipated . . the right of property was in Cato Gallman's alienee, . . [II.] unless the slave has been permitted to go at large,

as a free man, and without the control of an owner, the act has not been violated. . . he could not be legally captured. . . [428] The jury found for the plaintiff, and the defendant appealed" The Court of Appeals concurred "with the presiding judge in his views of the law, and the verdict of the jury must be regarded as conclusive of the facts."

Burgess v. Heape, 1 Hill Eq. 397, December 1833. [401] "defendant has run away to Alabama, carrying away and selling the negroes," of whom he owed one half.

State v. Cattell, 2 Hill 291, March 1834. Held: "The using or carrying of fire arms by a slave, to be contrary to the intent and meaning of the act of 1819, and subject to seizure and forfeiture, must be an using or carrying without 'a ticket or license in writing from his owner or overseer;' and the fact that a slave having such license uses the gun in an unlawful manner, will not create a forfeiture." [O'Neall, J.]

Monk, Administrator of Judy, v. Jenkins, 2 Hill Eq. 9, March 1834. "John Cato Fields, . . 1806, executed a deed of manumission, by which Judy was . . set free. . . [He] died in 1817, . . bequeathed certain slaves and other property to Judy, and appointed . . trustee, . . executors put Judy in possession of the legacy. Shortly after . . both Judy and . . her trustee, died, and the defendant . . now in possession of the property, . . [refuses] to deliver it up." [12] "Judy, had the uninterrupted enjoyment of freedom from the date of the deed to her death,"

Held: "neither . . Fields, nor any person claiming as a volunteer under him, could dispute the validity of the emancipation, even if there had been no deed. . . [13] the master's property was divested, . . There can be no slave without a master, . . after such irregular emancipation,[1] until seizure is actually made, the emancipated slave must stand on the footing of any other free negro. . . [14] the woman was never seized, and being now dead, never can be. Her legal representative has the same standing in Court that the representative of any other free negro would have." [Harper, J.]

Johnson v. Brockelbank, 2 Hill 353, April 1834. "represented . . that the slave was a good bricklayer, when . . he was not;"

Bank v. Toomer, 1 Hill Eq. 27, April 1834. [34] "Some of the slaves retained were favorite ones, whom she desired to emancipate,"

Chestnut v. Insurance Co., 1 Hill Eq. 72, June 1834. [76] "sold in 1819 or '20, a negro woman . . and child . . for $800."

State v. Maner, 2 Hill 453, December 1834. "the defendant and Phil [a slave], who . . were on terms of intimacy, got into a quarrel and a fight ensued, after which the defendant shot him." "The defendant was indicted for an assault . . with an intent to murder . . verdict of guilty,"

Judgment thereon, affirmed: [456] "indictment will lie for an assault with an intent to murder a slave," [455] "The act of 1821 changed the

[1] Act of 1800. 2 Faust 355.

murder of a slave from a mere misdemeanor, which it was under the act of 1740, to a felony. . . It, in a criminal point of view, elevated slaves from chattels personal to human beings in the place of the State;" [O'Neall, J.]

State v. Graham, 2 Hill 457, December 1834. Graham, a free man of color, having neglected to pay "four dollars and forty cents for the general and poor tax for the year preceding," had been seized by the sheriff and advertised for sale, "for a term of time sufficient to satisfy the same not exceeding one year." [1]

Held: free negroes are not liable to be sold for a property tax. [458] "most of these persons are idle and dissolute, and possess no property. It was only necessary for securing the payment of the capitation tax imposed on such, that their service should be subjected to sale." [Harper, J.]

State v. Cheatwood, 2 Hill 459, December 1834. "Indictment for the murder of a slave." [464] "no doubt at all but that it was the prisoner's intention to injure the slave, and no reasonable doubt but that it was his intention to kill." The trial judge [461] "charged . . that he could admit no other distinction between the killing of white men and that of negros, than this—that in the latter class of cases, a smaller degree of provocation would have the effect of extenuating or excusing, as the case might be." Verdict of guilty.

Motions in arrest, and for new trial, dismissed: [462] "the general purpose of . . act [of 1821] was certainly to make the murder of a slave the same offence as the murder of a freeman at common law. . . [465] This is the first instance of conviction under the act . . that has been brought before us." [Harper, J.]

Graham v. Lewis, 2 Hill 477, December 1834. "overseer for one year, . . wages, one share and a half of the whole produce of the plantation."

Saunders v. Anderson, 2 Hill 486, December 1834. "overseer's wages, . . $10 per month for one year."

Heath v. Heath, 2 Hill Eq. 100, December 1834. [102] "the testator, in 1816, left forty-two negroes, which, in January, 1832, had increased to seventy-five;"

Sarter v. Gordon, 2 Hill Eq. 121, January 1835. Abram and his family [124] "came by Mrs. Sims in marriage, and some of them had been raised by her. They were purchased by Stevens, at sheriff's sale [in 1827], . . and after the sale he said that if the family of Sims . . would pay what he gave, and some compensation for his trouble, they should have the negroes." An agreement to that effect was executed in 1832. Specific performance decreed by Chancellor De Saussure.

Affirmed: [135] "Suppose the case, which I have known, of a slave accustomed to wait on a deaf and dumb person, and from long habit able to communicate ideas with him. This would add nothing to his market value, though rendering him inestimable to his owner. . . A slave may have been the nurse . . or may have saved the life of one of . . family. . . what mockery . . to tell the master that he might have full compen-

[1] Tax act of 1833.

sation by damages for the loss of the slave? And unless there be something very perverse in the disposition of the master or the slave, in every instance where a slave has been reared in a family, there exists a mutual attachment . . The tie of master and slave is one of the most intimate relations of society. . . [136] There may be exceptions to the rule. If . . the purchaser contracted for the slaves as merchandise to sell again, . . complete justice might be done by a compensation in damages." [Harper, J.]

Bartlett v. Thynes, 2 Hill Eq. 171, February 1835. [173] "Jack was likely and prime—was patroon of Thynes' boat for a year or two; also, worked on Thynes' farm—good for any work. The general hire for boatmen is $12 or $14 per month—field slaves . . $40 to $60 per year. Hester worked chiefly about the house . . Both Hester and Jack in the prime of life. . . when he first knew him, Jack was a boy. When Thynes first had him, hired him at seven dollars per month—he fed and clothed them. . . The two slaves were worth $100 per year, for the last five years."

Miller v. Reigne, 2 Hill 592, March 1835. Trover. "Sam Bennet . . was a man of color, and had once been the slave of a Mr. Bennet, but for more than twenty years was recognized by the community as a freeman, and had even dealt as such with his former master, who had hired him and paid his wages. On the death of Mr. Bennet, in 1814, Chloe, the wife, and Nelly, the daughter of Sam, were sold by the executor, and purchased by Mrs. Peigne, . . as it was alledged [*sic*], for Sam. They went into his possession, and there remained (except occasionally when Nelly was hired out by her father,) until his death, . . five or six years ago. . . in 1821 Peigne [as administrator of his mother] presented an account to [Sam] Bennet for the price of these negros. In 1833, Peigne [as agent of Reigne] lodged Nelly in the work house, as the property of Reigne. . . After Nelly had been [there] . . about two months, the plaintiff [administrator of Sam] . . demanded her of . . the keeper of the work house, and, on his refusal to deliver her, brought this action;" Peigne, as agent of Reigne, had given Sam [593] "a certificate that he was a freeman." The jury found for the plaintiff.

Motions for nonsuit and new trial dismissed: I. "the lapse of twenty years did well authorize the presumption of the regular execution of the deed of manumission required by the act of 1800,[1] . . [II.] [594] The lapse of twelve years [since 1821] . . raises the presumption that the balance then struck against Sam, for the price of his family, has been paid." [O'Neall, J.]

Fable v. Brown, 2 Hill Eq. 378, March 1835. "John Fable, a foreigner, settled in Charleston some years ago, . . [379] He had two (illegitimate) colored children by a female slave. . . executed . . will . . 1831, . . 'The residue of my property I will and bequeath to my children, whom I acknowledge, to be divided share and share alike . . The interest . . to be appropriated to . . [their] support . . at the dis-

[1] 2 Faust 355-357.

cretion of my executor, . . guardian . . desire that my executor will purchase, if practicable, my son, out of the funds of my estate, previous to a division of the same.' . . Both the children are in servitude, and held by the same owner." De Saussure, Ch.: [380] "The executor is bound to purchase him ['his mistress being willing to sell him'] . . [381] In what way he shall treat the boy . . is for his own discretion, in which the testator has unbounded confidence. . . respecting the property . . [382] Is it against law to direct the executor to apply the income to the support of two slaves? . . I am of opinion the executor . . ought" Decree affirmed.

Stallings v. Foreman, 2 Hill Eq. 401, March 1835. "the slave . . was, at the time of the purchase [for $350] . . a boy somewhere about twelve years of age, and capable of being a plough-boy. He has since grown up, and is a very valuable servant, and his hire for his annual services . . is . . [402] not less . . than three or four times the . . interest."

State v. Cantey, 2 Hill 614, May 1835. "Indictment for larceny. On the trial, two of the principal witnesses for the prosecution were objected to . . on the ground that they were persons of color. . . It appeared that the father of the witnesses was a white man, and their mother a descendant in the third degree of a half breed who had a white wife; their mother's father was the issue of this marriage, and he also married a white woman; so that the witnesses had one-sixteenth part of African blood. The maternal grand father of the witnesses, although of dark complexion, had been recognized as a white man, received into society, and exercised political privileges as such; their mother was uniformly treated as a white woman; their relations of the same admixture have married into respectable families, and one of them had been a candidate for the legislature. The witnesses were ordinarily fair, and exhibited none of the distinctive marks of the African race; they are respectable, have always been received into society, and recognized as white men—one of them is a militia officer, and their caste has never been questioned until now. His honor charged . . [615] that if there be a clear visible admixture evidenced by the color . . the hair or features, the person is to be regarded as of the degraded class; but if these distinctive characteristics be wanting, and the person has been received . . as white, although there may be proof of some admixture . . from a remote ancestor, yet such person is to be accounted white, . . The jury found that the witnesses were not persons of color; they were then sworn, and the defendant found guilty."

Motion for new trial, dismissed: "We feel no disposition to depart from the rule laid down in The State *v.* Davis[1] . . The ground of that decision is, that neither of the several statutes which speak of 'negros, mulattoes and persons of color,' nor the constitution of the State . . give any definition . . nor is there any known technical meaning . . to the . . popular signification we must resort . . it would be an absurdity . . to say that such an one [as these witnesses] is, in the *popu-*

[1] P. 346, *supra*.

lar sense . . a person of color. If we should say that such an one is to be regarded as a person of color, on account of *any* mixture of negro blood, however . . remote, we should be making, instead of declaring the law, and making a very cruel and mischievous law. . . We cannot say what admixture . . will make a colored person, . . [616] The condition . . is not to be determined solely by . . visible mixture . . but by reputation . . and it may be . . proper, that a man of worth . . should have the rank of a white man, while a vagabond of the same degree of blood should be confined to the inferior caste. . . It is hardly necessary to say that a slave cannot be a white man. . . We wish it to be understood that this matter is regarded as settled, . . [617] I think it to be regretted that the question was made in the present case, . . It is doing unnecessary violence to the feelings of persons . . of much worth and respectability." [Harper, J.] "Johnson and O'Neall, Js. concurred."

State v. Elliott, 2 Hill 617, May 1835. "The defendant was indicted, under the act of 1819, for not . . keeping on his plantation . . a white man capable of performing patrol duty, for . . [618] 1830 and 1831. . . overseer . . visited Social Hall twice a day," but resided on the adjoining plantation. Verdict of guilty. New trial refused.

State v. Ferguson, 2 Hill 619, May 1835. [621] "being unable to take the prisoner off Walker, . . [deceased] called in [negro] Ben to his assistance; . . Ben threw the prisoner against the wall, who called out to part them."

Frazier v. Frazier, 2 Hill Eq. 304, May 1835. Will of John Frazier, dated 1824: [305] "it is my will for my executors to hire out my negroes and see that they are treated well and not abused. . . the money arising from the hire of my negroes to be kept entire and distinct . . and after the decease of my wife, . . it is my will . . that the whole of my negroes be set free by my executors, and the . . money arising from the hire of the said negroes be equally divided among [them] . . and if the hire does not amount to one hundred dollars each, that it shall be made up to them out of the other part of my estate . . the interest of the money is to enable them, with the assistance of government, to go to St. Domingo to be colonized, or to any part that they with government may choose." Codicil, 1825: "directed that if his man slave, Isaac, would pay to his executor $600, that he, his wife Lively, and his daughter Hailey, 'shall be set free to enjoy liberty forever:' and that if his negro boy, young Isaac, should wish to be set free, that upon the payment by him of $650 to the executors, he 'shall be set free and enjoy liberty forever more.'" After the death of the widow in 1832, "one of the executors, seized the negroes, with the view of carrying the will into effect. This bill was filed by the next of kin . . claiming . . the negroes . . [306] The case was heard . . 1833. De Saussure, Chancellor. . . the object [of the act of 1820] . . was to prevent the emancipation of the slaves held in the State. . . [307] Besides, what government was meant? If the State government, that has no foreign relations with St. Domingo, . . If the government of the United States be meant, . .

with that subject . . the government of the United States has no right to intermeddle, and . . if it made any attempts directly or indirectly, a disruption of the bonds which bind and unite the States, would necessarily take place. It is the *noli me tangere* subject. Any intermeddling by the government would be the immediate death of the Union (however valued and cherished on other grounds) by the general consent of the citizens. If the executors choose to apply to the State Legislature, they may do it. But till . . a decision be made by that body, I feel myself bound to . . treat this direction . . to emancipate slaves as an attempt to evade the statute, . . void. . . next of kin . . entitled"

Decree reversed: [316] "a testator's directions to his executor to remove his negroes from the State and set them free, are legal and valid, and must be obeyed. For he had the power in his lifetime to do the act; . . [317] defray the expenses . . out of the interest from one year after the testator's death, on the sums of $100 . . pay to . . slaves when they . . set them free . . $100 each, and any arrears of interest which may remain after defraying the expenses of their removal and emancipation." [313] "the slaves, under [the codicil,] . . have not, I presume, attempted to obtain any benefit. The probability is, that in no event could it benefit them." [O'Neall, J.]

White v. Vaughan, 2 Hill Eq. 329, June 1835. "I . . will . . that my negro man, Will, have the privilege of choosing his master, and that he be appraised by two good men, which shall be the price for which he is to be sold;"

State v. Johnson, 3 Hill 1, December 1835. Indictment for stealing three negro slaves. "The slaves disappeared from their owner's residence at separate times; one first, and afterwards, the other two."

Harley v. De Witt, 2 Hill Eq. 367, December 1835. Held: [370] "The [£10] rule [in regard to the hire of negroes] was never intended to operate imperatively, but to supply a principle . . In this case, however, the slaves were employed but a small portion of their time in planting, but for the most part in preparing timber for market, and working on the railroad; and the necessary inference is, that these were more profitable pursuits; consequently a rule based on an estimate of cotton planting cannot apply,"

Waddell v. Mordecai, 3 Hill 22, January 1836. "The defendant, as the agent of the Brig *Encomium* . . entered into a contract . . to transport twenty-five or thirty slaves from Charleston to New Orleans, at twelve dollars around. . . The vessel . . was wrecked on one of the Bahama Keys. . . The passengers were conveyed . . to Nassau. . . The slaves were taken in charge of the authorities of the island, and were liberated. Seven of them escaped, and returned to Charleston, whence they were sent to the plaintiff, at the expense of two hundred dollars."

Thompson v. Schmidt, 3 Hill 35, January 1836. The plaintiff lodged the negro "in jail for safe keeping, directing the jailor not to lock him up, to give him the liberty of the yard, and every indulgence. The defend-

ant on the same day lodged a detainer, directing the jailor not to give him up to the plaintiff, not [?] to lock him up, and whip him if necessary. . . the negro escaped from jail."

Corbett v. Cochran, 3 Hill 41, January 1836. [42] "$407.69, for goods charged originally to . . a free colored woman, but delivered to her daughter, . . with whom the defendant had some connection. . . the defendant . . promised to discharge the demand"

City Council of Charleston v. England, 3 Hill 56, January 1836. "suit for four penalties, each of twenty dollars,"[1] [57] "These slaves were employed in a bake-house owned by the defendant, but leased to Marshall . . to whom the slaves were also hired." [56] "during . . 1834, with lawful badges, which expired on the last day of December. . . 3d February, they were found . . without badges. . . not seized and carried to the workhouse, as they might have been, . . [58] [The defendant] immediately went to the City Treasurer, paid the fees, and procured badges." Verdict for the plaintiffs. New trial refused.

State v. Schroder, 3 Hill 61, April 1836. [62] "as he was walking down Market street, with Mr. Wish, [about eight o'clock in the evening] . . they remarked five negros go into a shed-room, and Mr. Schroder immediately went in after them, and took a decanter of whiskey with him. Witness and Mr. Wish, (who was also a city marshal,) forced into the door of this shed-room, where they found three of the negros sitting at a table, with liquor in some tumblers, and the decanter nearly empty. They ran off by a back-room door into a yard." Schroder was indicted, under the act of 1834, for selling spirituous liquors to a slave [65] "of a person and name unknown" without a ticket from his master, and found guilty. Similar verdicts were found on two other indictments. Motion to arrest judgment, granted.

State v. Berhman and Peters, Riley 92, April 1836. "The defendants were indicted under the act of 1834, for buying rice from a slave. . . Moses . . suspected the store of Berhman; that he and others sent a negro . . to the shop . . The boy carried 3 or 4 quarts of rice, and two bottles of lamp oil. He left the rice . . [93] Peters [the clerk] was in the store [but Berhman was not.] . . Lieut. of the Guard . . went in and saw the paper in which rice was put, lying on the binn; . . The jury found both guilty," Motion in arrest, dismissed.

State v. Lefronty, Riley 155, April 1836. One of the city marshals "suspected that spirituous liquors were sold to slaves[2] in the shop of Daniel Becker and Co.; and that with a view to detect the offenders, he gave Mr. Mintzing's Sam three cents to go into the store to buy liquor; Sam went in and came out with some whiskey.[3] . . Sam worked at the saw yard" Verdict of guilty.

[1] City Laws 185.

[2] Act of 1834.

[3] Another city marshal gave similar testimony in State *v.* Lohman, Riley 67. "There were fifteen or twenty negroes in the shop."

Heriot ads. McCauley, Riley Eq. 19, April 1836. [21] " 1819, . . Five of said negroes sold . . at $690 each, . . four . . at $710 each, . . one . . for $880—one . . for $590,—three . . at $820 each, . . and two . . at $670 each,"

State v. Gunter, 1 McMullan 458, Fall 1836. " indictment for buying corn from a . . slave, . . Bob knocked at the window . . Defendant went out. Bob brought about four bushels of corn, . . defendant paid him . . in meat, tobacco and whiskey. . . an hour or two after dark. Afterwards, Bob brought about two bushels of corn, a little before day, . . a night or two . . after " Verdict of guilty.

Free ads. State, 1 McMullan 494, Fall 1836. " The trading consisted in having sold to a slave three yards of cotton shirting, at 20 cents per yard."

State v. Green, 4 Strobhart 128n., Fall 1836. The husband of the prisoner was shot by some unknown person. [130n.] " she instantly cried out, ' Henry is killed—the negroes have risen—we shall all be killed ' . . [131 n.] There did not appear to have been any apprehensions of a rising among the negroes. . . [132n.] it was, she said, Tommy Ray's negro man, Edom, who killed him," Edom was tried and acquitted. Mrs. Green was found guilty of being an accessory before the fact.

State v. Nates, 3 Hill 200, December 1836. " Indictment for gaming with a negro . . The game . . was *Rattle and Snap* . . a game with cards and dice: " Convicted.

Held: betting is not necessary to constitute the offence of gaming with a negro, under the act of 1834.

Brunson v. King, 2 Hill Eq. 483, December 1836. Will, 1822: [485] " that Silla and all the rest of the family, with old Jack, old Phebe and old Flora, remain on the place where my family shall live; and that the said old negroes be treated humanely by my executors during their lives, but more particularly in old age."

Charlotte Miller v. Justices (cited in State v. Belmont), 4 Strobhart 450, 1836. Charlotte Miller was [460] " the descendant of an Indian woman, living in Charleston about fifty years ago," The justices [450] " were proceeding to try her under the Act of 1740.[1] . . it was unanimously decided by this court . . that the words . . ' free Indians in amity with this government,' mean Indians domiciled in this State, although disconnected with any tribe . . Accordingly, a prohibition issued against the trial "

M'Ginney v. Wallace, 3 Hill 254, February 1837. " Mr. Hopkins took his negro Pat by the hand and put her hand into the hand of Laura M. M'Ginney, and said . . ' this is no longer my property, but this child's,' (plaintiff's;) then addressing the child, he added, ' but daughter, (she was the grand child of Mrs. Hopkins,) you must let her work for grandfather (himself) while he lives.' Hopkins kept Pat during his life; but always

[1] Sect. 1. 7 St. at L. of S. C. 397.

spoke of her as plaintiff's negro." [256] "and when the negro was sick, sent for the plaintiff's mother to nurse her; and she also paid the expenses of her confinement when her children were born."

Held: "whether the donor did not intend . . to vest her immediately in the donee . . should . . have been left to the jury."

Horry v. Glover, 2 Hill Eq. 515, February 1837. [517] "the Springfield gang [eight slaves] . . were mostly superannuated and are dead, without children."

State v. Spenlove, Riley 269, February 1837. "the prosecutor . . had lost from his plantation a goat and two kids, . . a sailor . . purchased the kids from a negro."

Bennet ads. Carter, Riley 287, February 1837. "Mr. Moses deposed, that the four negroes were put up on the auction table; and he was employed by Carter as his salesman. Both Carter and himself got on the table. . . [288] no guaranty but that of title. . . The witness asked the girl what was the matter with her. She said she could not retain her water. . . the children [two boys] were four or five years old; that the mother was a good looking woman ['30 or 35 years old'], the other woman old. . . that the negroes after the first sale went to Carter's and from thence, he thinks, to the work house. . . that the woman, if sound, would have been worth $450. . . that the charge for keeping a negro at the work house is eighteen cents per day, and if fed with meat, more. . . Carter, the vendue master, . . plaintiff . . deposed . . that the four negroes sold for five hundred and sixty dollars [April 14, 1834]; and at the re-sale [May 2] for four hundred and sixty. . . that the second sale was . . at the risk, of the former purchaser. . . For the defence . . [an auctioneer] deposed . . that in 1834, negroes were not as valuable as now; . . that the two boys would have brought $600; but that selling them with the woman would decrease their value $200. A certificate of Dr. North . . [289] that the woman was valueless and offensive."

Held: "The plaintiff . . had the right . . to bring this action [for the difference in price]; but . . cannot be a witness in his own cause,"

Ferry Co. ads. Clark, Riley 300, February 1837. "two negroes came to the ferry landing, and called for the boat. . . overset . . One or two days after, the owners of Sam went to search for him. His body was found in the river." They brought an action for his value. "the jury . . found for the plaintiff."

Smith v. Bank, Riley Eq. 113, February 1837. "The complainant . . gave a . . full price . . The Bank made no representations, as to the condition of the slaves, . . striking out the warranty, . . The complainant alleges that one . . had the fever and ague, at the time . . continued ill for 6 or 7 months, . . died of dropsy."

Held: [114] "a refusal to warrant negatives all implication of warranty:"

Richards v. Towles, 3 Hill 346, May 1837. [347] "agent of M'Bride . . employed to take his negros out of the State and sell them, at a

time there were various executions and judgments against him . . unsatisfied. . . taken . . to Alabama and other places," He sold one in Georgia.

Seibels v. Whatley, 2 Hill Eq. 605, May 1837. Will, 1826: "unto my wife . . all my estate . . during her life, and at her decease, . . unto . . my nephew . . Nance and her increase," Nance [606] "had at the execution of . . will two children,"

Held: they [609] "do not pass under a bequest of the mother."

Moultrie v. Jennings, 2 McMullan 508, Spring 1837. "When the plaintiff was . . not more than 2 or 3 years old, . . his . . grand-step-father . . [gave] him a negro . . child, Jinsey,"

Dillard v. Wallace, 1 McMullan 480, Fall 1837. "There was some evidence, that, during the extreme cold weather in February, 1835, the defendant's negroes were at work, and kept from the fire by the plaintiff [overseer]; . . that in the course of the winter, 1834-1835, a negro man of the defendant's . . was badly frost bitten; but whether this was from the act of the plaintiff, did not appear. The plaintiff whipped a negro woman for sending a child from Meadow Woods to the defendant's house, the defendant complained about it, and the plaintiff said if he had done wrong, he was sorry for it. An old woman whose duty it was to attend to the children, was put to milk the cows. And a woman . . who had previously milked, and who was a crop hand, was put to cook; . . [Defendant's counsel] [481] proposed to show that the plaintiff had received the proceeds of the defendant's negroes crops, (say $163,)"

Poag v. Carroll, Dudley 1, December 1837. [2] "Upon her being called in, with the child in her arms, . . Carroll said, 'Here is the child; I intend, or allow this girl for my son John, and I give this bill of sale [of the child] to prevent them being separated.'"

Cole v. Broom, Dudley 7, December 1837. The slaves, who were assigned to a widow in Virginia for her life, were sold by the sheriff, in 1827, to Faris, who "sold them (still conveying only the life estate), to Daniel Houser and . . Marshall, of . . N. C., who carried them out of the State. . . January, 1828, . . absolute . . conveyance to Christian Houser, an insolvent person, and they were hurried off in the night to South Carolina. On information being received that the Coles were in pursuit, one Clinch was sent along with Christian Houser as a sentinel on his conduct, and to see that he did not get drunk and spend the money; and deposed, that he sold the slaves, . . [8] There had been a recovery by the [remaindermen] plaintiffs against Faris, in Virginia, for the value of the negroes . . of which some small amount had been levied;"

Held: [10] "no bar to an action of trover for the property against a person in possession here or elsewhere."

Corley v. Cleckley, Dudley 35, December 1837. Held: "a contract of hiring is a purchase for a term of the services of a slave; and if the slave be sound at the time of contracting, any loss arising from subsequent disease must fall upon the hirer, . . unless the slave should die;"

State v. Glasgow, Dudley 40, December 1837. "indicted . . for suffering his slaves to be employed in vending spirituous liquors.[1] . . proved . . the selling of half a gallon of whiskey to a negro. This was drawn out of a barrel in the defendant's own house, by his negro woman Betty, the defendant himself standing by, and part of the price was paid to him at the time, and the balance was to be paid him next day . . defendant's own acknowledgments on the trial of Betty before Justices."

Held: [42] "the slave was merely the involuntary instrument;"

Cook v. Davis, Dudley 67, December 1837. "The defendant had a valuable negro man, named Simon, whose mother, Tilly, a very aged woman, belonging [*sic*] to one Smith; and to gratify Simon, the defendant was desirous to relieve Tilly from servitude, and to place her where she would be comfortably provided for." He requested plaintiff "to purchase her if it could be done for twenty-five dollars, with an understanding that she should be maintained by the Aricks, to whom she had formerly belonged. . . L. D. Arick then purchased the negro for thirty dollars, four or five years previous to the trial. . . [68] Tilly was maintained at Arick's, and died there about two years previous to the trial."

Tennent v. Dendy, Dudley 83, December 1837. "action of trespass . . against . . a captain of patrol, appointed by the intendant of the village . . for whipping a slave, belonging to the plaintiff [but hired to another], within the limits of the corporation, before . . nine o'clock at night, at and after which time the Act authorizes the patrol to take up and whip slaves, found outside of their owner's premises without a pass. . . The negro was whipped severely with twenty stripes. . . [84] The motion for a nonsuit was overruled, and the plaintiff had a decree."

Affirmed: [85] "more analogy to slaves in . . law applicable to land, than . . found in the law of personalty. . . on the principle derived from the analogy of an easement, the owner may, notwithstanding the hiring, recover in this form of action. But the case need not rest on any such analogy. . . the master has all the means of protecting his slave in a civil point of view, which the slave, if a freeman would have. . . [86] Slaves are our most valuable property. . . too many guards cannot be interposed between it and violent unprincipled men. . . The slave ought to be fully aware that his master is to him . . a perfect security from injury. When this is the case, the relation of master and servant becomes little short of that of parent and child . . [87] and hence result those striking instances of devotion, which, at least, on one occasion in this State, induced a slave to peril his life to save that of his master, and failing in the attempt, nobly to perish with him." [O'Neall, J.]

Bogan v. White, Dudley 87, December 1837. [88] "the negro woman . . was sick, and he wished the mother of defendant's wife to stay . . and take care of the negro. . . The mother made clothes for these negroes. . . Dr. Nance . . attended on [negro] Jesse,"

Williams v. Vance, Dudley 97, December 1837. "Robin had belonged to . . Johnson, and had run away for some time before a deep snow,

[1] Act of 1831.

which fell in . . March, 1835. During the time the snow was on the ground, Robin came in to . . Godfrey, under the impression that Godfrey had bought him. He was badly clad, and had no shoes; he had a slight cough, from cold. . . Williams bought him . . about a week before he sold him to Vance [April 3, 1835, for $675]; . . the measles were on his plantation. He let Vance know . . [98] Vance inquired of Robin's mother, whether Robin had ever had the measles, . . he had. . . short time afterwards, Robin was taken with the measles. . . On the 29th [April] . . Dr. Rook was called . . ill with secondary measles, . . On the first Monday in May, Vance . . met with the witness . . and asked him 'if he had seen Williams—that he wanted him to pay for that dead negro.' Witness replied, 'is the negro dead?' Vance said, 'no, but he will die soon.' . . Robin died" that month.

Held: Vance [99] "was put on his guard, and had no right to rely on an implied warranty."

Gregg v. Harllee, Dudl. Eq. 42, December 1837. [45] "Harllee [tenant for life] . . was informed . . that . . Gregg [the remainderman], was tampering with the slaves, . . to induce them to leave his service, . . The overseer [of Harllee] . . testified that the behavior of the negroes was changed for the worse; . . One of them did . . run away and go to Gregg. . . Gregg . . had only instructed the slaves to leave the defendant in the event of his attempting to take them out of the State. . . defendant . . collected the slaves, . . chained the males, and removed them into North Carolina." Gregg pursued with three [46] "other men armed, . . Defendant had with him eight men besides his two brothers, . . all, or mostly all, armed. . . He threatened to lynch or flog [Gregg] . . [47] Gregg . . concluded to accept [$2000, about [53] 'one-fifth of the value of the slaves;'] . . decreed, that . . Harllee, deliver . . the slaves" to Gregg. Affirmed.

Righton, Guardian, v. Wood, Dudley 164, February 1838. "action of trespass in the nature of ravishment of ward to try the freedom of Abby Stoll and her child. . . [165] Abby, was born free. Subsequently to 1821, she was tried by a court of one magistrate and two freeholders for harboring a slave, and was sentenced to the penalties imposed by the Act of 1740.[1] . . being unable to pay [them] . . she was sold in . . Charleston. His Honor stated to the jury . . The Act of 1821 was a repeal of the Act of 1740, in relation to this offence . . hence the sale was void. The jury found for the plaintiff." New trial refused.

Miller v. Dawson, Dudley 174, February 1838. "that her grandmother was an Indian woman, living in Charleston at least fifty years before the trial—that her mother was the child of a white man by the same Indian woman, and that she herself was the child of a white man."

Held: "the term 'mustizo,' used in the Act of 1740,[2] signified the issue of a negro and an Indian."

[1] P. L. 160.
[2] Sect. 14. *Ibid.* 156.

State v. Singletary, Dudley 220, February 1838. Will of George Broad, "a foreigner by birth," [1] dated 1836: [8 Rich. Eq. 96] "I . . bequeath to . . Dangerfield . . my slaves Daphne and her [eleven] children . . and her [two] grandchildren, . . together with the future issue and increase of such as are females: In trust, . . that . . Dangerfield . . permit . . the slaves . . to . . appropriate their time and labor to their own proper use . . without the intermeddling . . of any person . . whomsoever, further than may be necessary for their protection under the laws of this State, . . I give . . all the rest . . of my estate . . to . . Dangerfield . . upon trust . . [97] and for this purpose only, that the said slaves . . and increase, be permitted . . to use . . said estate . . without the interference . . of . . Dangerfield, or any person . . further than . . necessary to secure . . slaves the full use" He left no "kindred besides his natural [slave [2]] children." [3] [Dudley 221] "Dangerfield qualified as executor. He kept the negroes on . . plantation . . given him by the will . . for their support, and made crops for them . . if the proceeds exceeded the current expenses, he appropriated the excess to his own use. He also hired out some of the negroes. The first year after the testator's death, Dangerfield paid taxes for them as belonging to . . [Broad's] estate, and tried to carry the will into effect; but the second year he treated the negroes as his own." [Rice 198 [4]] "Singletary says that he was employed by [Mrs. Rebecca Rhame [5]] . . to seize the negroes [6] . . that he, [with Mrs. Rhame] . . and Mrs. Dehay, her son and servant [with some ropes [7]], went to the plantation . . about 8 o'clock, . . 31st December, 1837; . . no white person on the place . . The witness ordered the negroes out of the house, and told them . . they must go with him to Charleston. Dangerfield came and asked . . by what authority . . witness replied, he had seized them for [Mrs. Rhame] . . and read the acts of the legislature" [Dudley 221] "he signified that he intended to set the negroes free before the clerk;" [Rice 198] "Dangerfield replied, it was a pity to drag them through the mud; . . [199] ordered a boy to bring the wagon. . . that Dangerfield had been informed by a boy of what was going on, and had dispatched a messenger to colonel Ferguson, who galloped up . . told Dangerfield to order [Singletary] . . off, and if he would not go, give him the whip; and that if . . more should come . . to shoot; . . Witness said . . that he had not come to lose or take life. Whilst . . talking, a boy, (one in dispute,) came up with a duck and gun; . . was insolent and witness told him to hold his tongue or he would tie him; . . finally left . . in consequence of threatened violence," The four were indicted for a riot. [Dudley 221] "His Honor . . instructed . . [222] That as long as Dangerfield had not attempted to emancipate and abandon them, (of which facts the jury were to judge,)

[1] Escheator *v.* Dangerfield, 8 Rich. Eq. 95 (96).
[2] *Ibid.* 98.
[3] *Ibid.* 97.
[4] Rhame *v.* Ferguson (1839).
[5] Second wife of Broad's brother-in-law.
[6] Under the act of 1800.
[7] Dudley 221.

no person was authorized to seize them under the Act of 1800; . . The jury found the defendants guilty." New trial refused. See Rhame *v.* Ferguson, p. 371, *infra*; Escheator v. Dangerfield, p. 447, *infra.*

Robertson v. Wurdeman, Dudley 234, February 1838. " Mrs. Wurdeman sold the negro woman and her children. After that sale, . . [another] child . . was born in New Orleans."

State v. Hardy, Dudley 236, February 1838. " son of the prosecutor, testified, that being suspicious of his father's corn having been stolen, he watched on the night . . That he saw the defendants speaking to Paris, one of his father's negroes, and heard them inquire if he could get them some bacon." Later, he " went off to the corn house of the prosecutor, unlocked the door and brought to them a basket of corn. The witness waited a little, and then advanced and spoke to them—upon which the defendants ran off, leaving the negro still holding the corn."

Simpson v. Insurance Co., Dudley 239, February 1838. " action on a policy of insurance of thirty-eight slaves, valued at twenty thousand dollars, . . shipped [with forty other slaves] on board the *Enterprize,* from Alexandria [D. C.], . . to Charleston, . . The vessel sailed . . January, 1835; . . heavy gales . . drove her off her course . . [240] the captain bore away for Bermuda, . . [where] [241] the vessel was . . detained by the officers of the custom house; while thus detained, and while she was refitting, a writ of *habeas corpus* was issued by the Chief Justice of Bermuda, directed to Captain Smith, requiring him to bring before him the seventy-eight slaves on board . . he obeyed the writ, and the slaves were told by the Chief Justice that they were free, and at liberty to remain if they chose. All except six (not included in this policy), chose to remain, and were discharged from the custody of the captain." The risks enumerated in the policy are [241] " arrests, restraints, and detainments, of all kings, . . or people," The presiding judge ruled, that " the bringing up of the slaves, under the writ . . and the discharge of them by the Chief Justice . . was included. . . The jury found for the plaintiff." New trial refused.

Drayton ads. Moore, Dudley 268, February 1838. [269] " Dr. Drayton was the owner of a schooner, the command of which was given to a black man. The schooner being destined for Bennett's wharf, entered the creek with crowded sail " and injured the wharf of Moore. Held: the master is liable.

Parker v. Gordon, Dudley 270, February 1838. Some fishermen had lost " a car full of fish, which was run down in the dock by the defendant's sloop, navigated entirely by his slaves."

Held: the master is liable, [275] " on the principle, '*Sic utere tuo, ut alienum non laedas,*' "

Richardson v. Richardson, Dudl. Eq. 184, February 1838. James Burchell Richardson's will, dated 1826, gave to his two sons, one hundred slaves each; and to one of his daughters, " certain specific slaves, [and] one-half the number of slaves he should have on his Belvidere

plantation at his decease. To . . [185] five [other] daughters, . . each, forty negroes;" Codicil, dated 1835: [197] "to my . . wife . . the following negro slaves, . . with all their future . . increase, . . my servant Moses, raised from his infancy and appreciated for his honesty and attachment. The trusty cook-woman Harriet, and the pastry-woman Eve, both have been attentive and faithful. Also, Fanny the seamstress, Lenn the fifer, Bess the house-maid, Roller the house-servant, Lucy the washer, Sharper the weaver, Henry the gardener, Betty the child of Fanny, Dick and Frederick the bricklayers, Ellick the blacksmith, Jesse the painter, Amelia the chamber-maid, George Harriett the carpenter, Prince the carpenter, Alice the home dairy-woman, Judy and her children, Tenah and Ned, Aphnah and her children Sampson and Rolla, Clarentine, Clementine, Doll the scullion, Lizzy, old Davy, Fiscal Philly, then of Fiscal Fanny and her family, Maria, Phoebe, Sary and her infant child, Linney and her three children, Olivia,"

Rutledge v. Rutledge, Dudl. Eq. 201, February 1838. [202] "In 1793, . . Harleston, in consideration of an intended marriage between his daughter . . and . . Rutledge . . covenanted to pay . . two thousand guineas, to be laid out in slaves, . . the two thousand guineas were . . invested in thirty-seven negroes, which with their issue and increase, now [1836] amount to sixty-six in number,"

Wilder v. Richardson, Dudley 323, May 1838. A negro was hired for the year 1837. "July . . he absconded and was out of the service of the defendant for the remainder of the year."

Held: [324] "the party . . hiring must sustain the loss."

Johnson v. Wideman, Dudley 325, May 1838. See same *v.* same, p. 372, *infra.*

M'Clintock ads. Hunter, Dudley 327, May 1838. [328] "Dr. Farrow . . was permitted to narrate what Ben himself had said . . as a patient. And Ben fixed the commencement of the disease [rupture], previous to his sale." Held: the latter testimony is inadmissible.

Percival ads. McVoy, Dudley 337, May 1838. [338] "had very competent servants (slaves), particularly a woman who was an excellent nurse."

Rice v. Parham, Dudley 373, May 1838. "the defendants . . were patrolling, and found [a gun] . . in the possession of the plaintiff's negro, who was living on a plantation without any white person residing thereon. [[374] 'The negro exhibited no . . permit;'] They seized [the gun] . . and carried it to a neighboring justice . . for condemnation. . . made oath that the . . negroes . . annoyed the neighborhood by shooting it on Sundays . . The plaintiff neglected to appear and resist the proceedings, and it was accordingly condemned.[1] . . the son of the plaintiff . . testified that he had placed the gun in the possession of the negro . . for the protection of the plantation; and had given him a written permission to use it for that purpose." Nonsuit.

[1] Acts of 1819, p. 31.

State v. Arthur, 1 McMullan 456, Fall 1838. Earle, J: [458] "While at the bar, I prosecuted an indictment against two Justices, for admitting to bail one charged with the murder of a slave, and they were convicted and fined." [1]

State v. Blease, 1 McMullan 472, Fall 1838. "The prisoner was indicted under the 3d clause of the 1st section of the Act of 1754,[2] . . for aiding a slave in running away . . It was proved that a slave, . . Jim, ran away from his master's service, on the night of the 24th of December, 1836; on the 26th . . [473] he was found in . . Georgia, and a paper [in handwriting, which was testified to be that of the prisoner] was produced by him as a pass, . . 'This is to show my boy Jesse a leaf to hire is own time for next year,' (signed,) 'Wm. Barnes.' On the 24th of December, 1836, Jim was seen at the house of the prisoner . . in company with the prisoner, nailing boards upon his paleings [*sic*]."

Madison ads. M'Cullough, Rice 38, December 1838. "The defendants were negro traders, and purchased . . Charlotte [[39] 'about twenty-seven years old'], . . at . . $900. . . [39] a witness . . told [one of the defendants] . . that Charlotte was entailed property, and he said it made no difference—he intended to take her to Alabama." She was sold there. Held: "the jury were right in making the defendants pay the whole sum."

Faulkner v. Wright, Rice 107, December 1838. [109] "the steamer . . plying on Pedee, . . was under the command and care of . . Russel, master, (a white man) Prince, (a slave) Pilot, and Freeman, (a free man of color) engineer, and about twelve or thirteen black men, as the crew. . . [111] the pilot . . was trust-worthy, and distinguished for his vigilance and experience. The engineer had acted on other boats as engineer; . . [112] on board . . before . . as first fireman; . . occasionally intemperate." Judge Butler thinks "it was shown there were no spirits on board . . when the accident happened." [115] "sunk by running on a concealed and unknown snag,"

State v. Bohles, Rice 145, February 1839. Witness "saw two negroes sitting in defendant's store [about 8 p. m.]: Ann, belonging to Mrs. Dupree, was going in at the time: . . [146] saw her take a phial out of her apron, and saw the clerk . . pour liquor [gin] into the bottle, and she paid for it. Witness then went in and took the bottle, and asked the clerk if he had a written permission to sell to this negro: denied that he had sold.[3] . . defendant was not present," "has been in no way otherwise implicable in such illicit trading;" Verdict of guilty. New trial.

State v. Stone, Rice 147, February 1839. [148] "The defendant being suspected of trading with negroes, a negro man . . was furnished with twenty-five cents and a bottle, and directed to go to the store of the defendant and buy some spirits. . . he returned in a short time, with a

[1] Acts of 1839, p. 15.
[2] P. L. 335, 336.
[3] [147] "the clerk has been already punished,"

pint of rum in the bottle, and the change:" [147] "The defendant was indicted under the act of 1834," and convicted.

Butler v. Walker, Rice 182, February 1839. [183] "The defendants were contractors to embank a part of the rail road . . they hired from the plaintiff ten slaves to work thereon, and by their covenant agreed to pay $12 50 cents per month, hire, and 'not to expose the slaves to rain, or other bad weather, or dangers of any kind.' The defendants also stipulated by their covenant that they would not require the slaves to labor before daylight or after dark. . . the slaves . . were discharged from work between sun down and dark. . . a hand car . . came up: . . the overseer of the defendants . . and the negroes applied together for leave to ride . . To avoid [a collision] . . they jumped . . slave . . [184] fell, . . died in a few days. . . The jury found for the plaintiff . . about one-half the value of his slave. The defendants appealed" New trial refused.

Parkerson v. Dinkins, Rice 185, February 1839. Action "to recover the difference on a resale . . Parkerson paid to Dinkins $520 for the negro . . [186] 1837. . . Dr. Horlbeck sworn: . . she had a limp. . . She said she was unable to attend to her duties about house. . . very bow-legged. . . She said she had runaway, and took a cold, and that the swelling arose from that. . . [Dr. Howard] would not have such a negro about him at all. Says it was chronic rheumatism; it appeared she had not been treated for it at all. . . that the negro had an awkward gait . . the gait of a country negro. Dinkins [at the sale] said, there is the negro, examine her, I know nothing of her. . . [187] The jury found for the plaintiff." Motion to set aside verdict, refused.

Rhame v. Ferguson and Dangerfield, Rice 196, February 1839. Action of trover for fourteen negroes. [197] "The title of plaintiff . . was founded on an alleged seizure" See State v. Singletary, p. 367, *supra.* Singletary testified [199] "that he never saw [the negroes] . . at work; . . no signs of cultivation about the house; . . [200] Dr. Theodore Gaillard . . sometimes attends the negroes . . Knows that the negroes are under the control of Dangerfield; who makes them work; some make provisions and others work out as carpenters. Dangerfield pays their taxes and medical bills; . . The negroes are very orderly . . Dangerfield lives about half a mile from the negroes, . . [The judge] charged the jury . . [201] that Broad's will was a palpable attempt to defeat . . the laws . . against . . emancipation . . and that if it had been carried into effect, the slaves were liable to seizure." Verdict for the defendants. New trial refused. See Escheator *v.* Dangerfield, p. 447, *infra.*

M'Clure v. Richardson, Rice 215, February 1839. [216] "At night when the boat stopped, fire was communicated to the cotton by one of the hands striking up a fire on board, contrary to orders;"

Chartran v. Schmidt, Rice 229, February 1839. "The plaintiff (a free colored woman,) brought her action of trover, for negroes, under the act

of 1827, against the defendant. On the affidavit of a third person, the defendant was under order of the clerk of court, compelled to give bond and security."

Held: Such affidavit is proper and sufficient. [231] "The person making the affidavit swears from his own knowledge, . . It would be gross injustice to allow a free person of color to bring an action, and withhold the means of making it effectual." [Earle, J.]

Fripp v. Fripp, Rice Eq. 84, February 1839. Appraisement, in 1829, of forty-one negroes of W. P. Fripp's estate (pp. 95, 96); of thirty-three negroes of Miss Fripp's estate (p. 97); and of one negro of J. Fripp's estate (p. 98).

Chaplin v. Givens, Rice Eq. 132, February 1829. [148] "Givens got $303 for [boy] Abraham [in 1813]. . . Sold Abraham because he ran-away. Charity ran away too; sold Charity also. . . [153] bill of sale . . to Mary Givens, of Rosalinda and her child, for $650, . . 1816." [147] "witness hired Rosalinda . . for forty dollars per year, . . Afterwards, Rosalinda behaved so bad, that she swapped her" [140] "Received . . 1831 . . six dollars, for three months wages of the boy."

Snowden v. Logan, Rice Eq. 174, February 1839. [181] "the negroes in question here, with another set, were brought out and put in a line, with a space between the parcels, and in the presence of [witnesses] . . Mr. Pope, pointing to the parcels respectively, said to Major Logan—'This set I gave to Mr. Snowden that set I now give to you.' There were twenty-two in all. . . [182] The negroes given were house servants, and their husbands."

Johnson v. Wideman, Rice 325, May 1839. Report by Judge O'Neall: [326] "action . . on a note . . for $100, a part of the price of . . Charles, . . [336] the consideration was $1150: he is described in [the bill of sale] as a good blacksmith. The title merely was warranted. . . [337] Henry Johnson . . plaintiff's brother . . bought Charles in August, 1833, for $1200, from . . Berry; . . [340] on the day he bought Charles, he [Charles] abused Berry; told him he kept his wife, . . Berry . . wanted Johnson to take back his note and he would kill Charles." Henry Johnson [338] "was about removing to Mississippi, and understood that Charles said if he did not get his wife he would not go with him: he went to the shop and tied him, and put him in jail for safe keeping. He agreed to live with his brother [plaintiff], and he bought him [in December 1833, for $1200]." [326] "plaintiff came [to defendant's] with Charles, . . January or February, 1835. . . had come to sell him Charles; . . [330] two women . . rated at $1,100 were . . given for Charles [and the note for $100]. . . The defendant . . wanted a smith . . who could be depended on, as he would have no white man with him. The plaintiff said he would suit him." [325] "said, any ten year old boy could manage him. . . he never knew him to run away. . . [328] he told the defendant if he would buy his wife, he would live with him. . . [329] The plaintiff said . . his work would average $3 per day. . . [337] 'defendant said [to a witness] he understood he could make a

key which would unlock any door.' " [330] " when . . at work on trial . . defendant said . . he . . was almost the finest negro he ever saw . . on account of his size. The plaintiff said he was as good as he looked. . . [Defendant's witness said:] He was saucy: he once saw him shove a white man . . down. . . threatened to beat another white man . . Wells. . . [331] said to Wells ' no one man ever had or ever should master him.' . . he worked for people as he pleased; . . said that ' neither white nor black had whipped him by force.' . . [332] [Witness's] brother . . a boy . . was once about whipping Charles' wife: she broke and run, crying and calling for her husband. Charles came to her and asked what was the matter: she said William . . was whipping her: he swore he would mash him to the earth. . . [333] At a race, Berry and another white man were quarrelling. Charles came up behind his master, shut up his fist and swore that he wished he was a white man. . . [336] Kemp [Berry's overseer] told him to cut some wood . . he said he would not. Kemp said he would be damned if he should not: Charles said he would be damned if he would. Kemp followed him with a board:—Charles took it from him and struck him, and went on his way, whooping and hallooing. . . [340] [Witness said] that Charles was flogged at Berry's; he had often helped to tie and whip him; it had no effect on him; he would curse his master as soon as taken down." Plaintiff's overseer said: [332] " He was the worst disposed negro he ever knew." [327] " He . . stayed with defendant about two months and then ran away. . . [331] Lewis . . went with the defendant to catch Charles. He caught him at Berry's, in the gin house, in the night; he was crouched in a corner with a knife in one hand and a club in the other: when he found he was discovered he made a rush to escape, he was shot at, the witness seized him, he carried him out of the house, broke loose and ran off, was pursued and taken. The defendant applied to Dr. Gray to look at his wounds, . . [332] they were dressed; he was . . put in jail [September 1835, for safe keeping]. . . The defendant employed Dr. Taggart to attend the negro, and told [the jailer] . . he would pay him something extra to attend to the negro. He had, when taken out of jail [in October], the typhus fever: Dr. Hibler attended to him after he was taken home." [327] " died in about two weeks." Judge O'Neall charged the jury: [342] " Occasional flights of a slave from his master's service for special causes would not constitute any material moral defect. . . occasional thefts among the tolerably good slaves may be expected: . . [343] Like master like man was, I told them, too often the case, in drunkenness, impudence, and idleness. . . [343] The jury found for the plaintiff," New trial refused.

State v. Gaffney, Rice 431, May 1839. [432] " The defendant was indicted for the murder of a slave. The jury found him ' not guilty of murder, but guilty of killing on sudden heat and passion.' "

Held: [437] " the finding is a good verdict, under the second section of the act [1] for killing in sudden heat and passion, . . the defendant must have judgment for that offence."

[1] Act of 1821. 6 St. at L. of S. C. 158.

Rainsford v. Rainsford, Rice Eq. 343, May 1839. Testimony of Rainsford's overseer: [358] "thinks Joe [in 1838] 40 or 45 . . perhaps [50] . . able bodied field hand . . [359] Negro fellow Brit is about 18 or 19 . . able plough hand. . . Hager . . 45 or 50 . . is an excellent field hand, for a woman. . . Nelly . . about thirty . . is quite a small woman, and as a field hand, is not an extraordinary good hand. . . Nancy, about 23 . . is an able field hand, for a woman. . . has two children, one . . about 4, . . other about 5 . . thinks the hire of Nancy with her two children [in 1837] worth about $40. . . At times Brit appears stupid, but he goes on with his work as well as common negroes. Nelly is something like Brit" "thinks Joe, in . . 1837, would have hired for $125. . . Brooks . . thinks . . Joe's hire would average $70 or $75. Hagar, with two children in 1823, would have hired for $30, . . up to . . 1828, and from . . 1828, to . . 1831, about . . $37 50. Andrew in 1823, was about 10 . . worth about $25, 1824 about $30, in 1825 about $35, in 1826 $40, in 1827 about $40, in 1828 about $45, in 1829 about $55, in 1830 about 60. Brit in 1828 was 8 . . worth his food and clothes to . . 1831. . . Nancy in 1823 was about 8 . . [360] worth her food and clothes, 1824 . . 15 to $20, in 1825 $20, in 1826 worth nothing on account of a broken leg, 1827 about $25, in 1828, $30, in 1829 about $35, and in 1830 about $40. . . Addison . . Thinks Joe in 1818 and 1819 . . worth about $150, in 1820 about $100, in 1821 and 1822 about $90, in 1831 about $80, in 1832 about $90, in 1833 about the same, in 1834 about $100, 1835 about $100, in 1836 the same, in 1837 about $120. . . Andrew in 1821 and 1822 was worth about $10 the first, and $20 the second, in 1831 . . about $80, in 1832 about $100, 1833 about the same, in 1834 about $120, in 1835 about the same, in 1836 about $130, and in 1837 about $140. . . Nelly for 1831 is worth $45, in 1832 she had a child and was worth about $30, in 1833 and in 1834 about $35, from 1835 to . . 1838 an average of $40. Nancy in 1831 and in 1832 was worth about $60, in 1833 about $65, in 1834 she had a child and was worth about $50, in 1835 about $50, in 1836 she had another child and was worth, for that year and 1837, about $35." (See table of hires, pp. 360, 361.) Johnston, Ch.: [365] "Hired slaves are commonly treated more harshly, or with less care and attention, than those in possession of their owner. Their health is less attended to; they are less likely to increase, and their moral qualities are almost always deteriorated." Johnson, J.: [370] "in a case tried by me sometime ago in Georgetown, where getting lumber for market was the principal employment, full grown, able bodied females were hired publicly at from 10 to $15 annually. . . the attention bestowed by the trustee to the wants of the negroes, and to the health and comfort of the young negroes, ought to enter largely into the estimate. It is the difference in value between a gang of negroes, who have not increased and are reduced to premature old age by excessive labor, and one which has rapidly increased in healthfulness and numbers; . . impossible to prescribe any fixed rule"

State v. Ford, 3 Strobhart 517 n., Spring 1839. "The prisoner was indicted, with . . Hindman, for stealing two slaves," While their ac-

complice, Dill, was carrying them away, [520n.] " his wagon broke down, and he turned the negroes into the woods—he and they returned to Ford's. He described a house in which they were kept; out of that house, on the Sunday-week after they were stolen, the negroes were run. He said that the prisoner furnished the negroes with three dollars to buy shoes for their trip; . . [521n.] He [Dill] said he was a Patent right School master" [520n.] " the Solicitor proposed to ask . . Anderson, if . . the prisoner had proposed to him to embark in a scheme of villany like the present. . . [Ford] told him [two years before] if he would . . [521n.] *join the lodge at his house*, he would make a smart man of him. . . said there was an easier way of making money than by work. . . [522 n.] The jury found the prisoner 'guilty.'" New trial refused.

Farr v. Thompson, Executor of Farr, Cheves 37, Fall 1839. [38] " the testator was never married. He had lived for many years in a state of illicit intercourse with a [bright] mulatto woman, his own slave ['the child of . . a half brother of testator'[1]], who assumed the position of a wife, and controlled, at least, all the domestic arrangements of the family. The issue . . was a boy, named Henry, who was acknowledged by the testator as his son." [1 Richardson 87] " his respectable neighbors would not allow him to be sent to school with their children. He sent him to a distant school, from which he was ejected, so soon as his caste was discovered, although his complexion was such that it required very close inspection to decide that he was not white;" [Cheves 38] " Many years before his death, he had endeavored, by application to the Legislature, to effect the emancipation of this boy. These efforts proving unavailing, the testator, after, or about the time he arrived at manhood, sent Henry to Indiana, where he had him settled, and provided him, from time to time, with considerable sums of money. . . [41] Fan had the influence over him of a white woman and a wife. He . . bargained for a negro, but would not buy till her pleasure was consulted; sold a negro girl at her desire, and made titles to another one that she offered for sale as her own, and when he had made the titles, said 'he hoped she would now be satisfied, as there was no other woman left; he hoped he would have some peace.' . . Fan refused to let a servant come to him when he called; they quarrelled about it—she shook her fist in his face and threatened to knock his teeth down his throat; witness heard them quarrel in the night; heard her call Hannah, a servant, to bring her the whip, and she'd beat his skin off. They would get drunk together, . . had tried to kill him with a spear;" [1 Richardson 81] " The testator, by his last will . . bearing date 16th . . June 1828, gave his whole estate to [Judge] J. B. O'Neall, . . executor. On the nineteenth . . he wrote . . 'I want Fan and Henry to be free; I want Fan to have one half of my estate, and Henry the other half. When Fan dies, I want Henry to have half of Fan's half, and you the other half for your care . . and should Henry die, leaving no wife nor child, I want you to have the whole . . I want you to give Henry a good education, and do the best you can with him, and deal out his share . . as you think he will improve it. I

[1] 1 Speers 97.

want you to take Fan home with you, and build her a comfortable little house somewhere on your plantation, and let Fender and Cesley live with her as long as she lives.' The testator died in 1837. . . [83] those scenes of drunkenness and violence . . most, if not all of them, were within two years of his death, . . up to [1828] . . it does not appear . . except in a solitary instance, she ever interposed her wishes . . 'Farr said he would give Henry ten thousand dollars, and send him to a free State. The rest . . he would divide among his relations, and would secure Fan her freedom. Fan objected to the division among the relations.'" In 1836 he made another will, [Cheves 39] "substituting Dr. Thompson [his family physician] in the place of Judge O'Neall, as legatee and executor. . . [42] The jury [in 1839] found against the will [of 1836]," New trial was granted. In 1841 [1 Speers 93] "the jury again found a verdict against the will [of 1836]." After a new trial was refused, the will of 1828 was admitted to probate. The heirs at law appealed. [1 Richardson 82] "the Jury found against the will," New trial granted: [87] "nothing which resembles undue influence exercised by Fan in the procurement of this will. . . [90] codicil [of 1837, as well as the will of 1836,] is no revocation of the prior will of 1828."

City Council of Charleston v. Brandt, Cheves 72, February 1840. [73] "Sum. Pro. to recover a penalty of $20, for violation of a City Ordinance, of . . 1836,[1] . . The evidence was that, one Sunday morning, there was a concourse of negroes about defendant's shop; that they continued in and about it during nearly two hours. . . Defendant kept his gate closed, and, from time to time, opened it to let negroes in or out."

Held: "such a presumption against the defendant, as imposed on him the necessity of proving that the negroes . . were not there unlawfully."

Ivy v. Wilson, Cheves 74, February 1840. "The *Neptune* in coming in to her accustomed landing, fell foul of the other vessel, which was moored to a wharf immediately below. . . When the *Neptune* was within a hundred yards of the *Dudley,* the plaintiff [Captain of the *Dudley*] ordered up all hands to assist in bearing her off and preventing the collision. Among them was the plaintiff's slave, George, described as a bold, ambitious, adventurous fellow, who got on the guard of the boat, outside of the bulwarks, and, though warned to avoid danger, remained in that position till one of his legs was caught and crushed between the two vessels. In consequence of this injury, he soon afterwards died. . . the pilot . . testified that George's position was a proper one to prevent the collision, but was one of great danger, . . The slave was worth from $1000 to $1200. . . [75] the Court said, if they believed that the negro's position was taken to protect . . the boat . . they ought not to presume that he wantonly exposed himself to unnecessary danger. . . Verdict for the plaintiff, $750." Held: "the verdict is right."

[1] "Clause 22d, . . 'That no negroes or persons of color, . . bond or free, shall be permitted to assemble or loiter in any shop, or . . about the door . . and shall not be allowed to sit down or remain therein longer than while actually engaged in purchasing such articles they may be lawfully authorized to purchase."

Lyles v. Bass, Cheves 85, February 1840. Doll, a female slave, "had been the wife of the defendant, a free man of colour, and had been separated from him by her master, Lyles, who carried her away into North Carolina. The defendant went to North Carolina to purchase her. Lyles told him she was very sick—that she was unsound, and he had better not buy her; but he said, it was his own look out, she was his wife. Lyles then told him that, if she died before she left there, he should not pay for her, . . bargain was completed by the defendant giving his notes for $500. At the time . . and long before, Doll was obviously very ill . . of no pecuniary value. . . declined constantly till she died. When sound . . offered for sale for $300. Bass was a man slow of apprehension, and easily imposed upon." Held: [87] "it is a binding contract, . . fairly made."

Venning v. Gantt, Cheves 87, February 1840. "The plaintiff was fully informed [at the sale] that Philander had a shortness of breath, supposed to have been occasioned by a fall from a house not long previous." He died soon after of [88] "a complication of diseased lungs and dropsy;" Held: [90] "the notice to Venning was not sufficient" to relieve the vendor for a sound price from his implied warranty.

State, ex rel. Luten v. Commissioners, Cheves 95, February 1840. "for the greater part of . . 1837, the plaintiff, as a contractor on the Rail Road, had . . [eighteen] hands ['hired from, different persons'] employed in making embankments." Held: [98] "the Commissioners have a right to command their labor." [1]

State v. Toomer, Cheves 106, February 1840. "Major, a slave of the relator, was convicted by a court . . in Christ Church parish, of the murder of Mary, the slave of [another] . . sentenced to be hung. The verdict was found by one Magistrate and three Freeholders, . . the other magistrate and two freeholders finding *manslaughter*. . . deceased had received the injuries in Christ Church parish, . . removed to Charleston, (St. Philip and St. Michael's parish,) where she died. . . A writ of prohibition was ordered, to prevent the execution"

Affirmed: [108] "if the accused were tried in St. Philips [*sic*] and St. Michael's, the verdict must have been unanimous." [2]

State v. Montgomery, Cheves 120, February 1840. "The defendant and his wife, were jointly indicted under the 37th section of the Act of 1740,[3] . . for killing a slave by undue correction. The husband was acquitted, but the wife convicted, and sentenced to pay the fine . . Equivalent to $214,28."

Wilson v. Hayne, Cheves Eq. 37, February 1840. Will, 1832: [38] "twenty negro slaves, to be selected from my whole gang . . of which . . six shall be workers;"

State v. Wilson, Cheves 163, Spring 1840. [164] "Wilson was in a state of intoxication, and meeting with Stuart, a mulatto man, conceived

[1] Act of 1825, sect. 9.
[2] Act of 1832, sect. 2.
[3] P. L. 173.

him to be an Indian, immediately struck him several severe blows on the head with a pistol, thereby disabling the slave considerably, and rendering it necessary to send for a physician. After being confined at the place where he was beaten for some days, he had to be sent home to his master. The Act[1] . . designates the horse-whip, cow-skin, switch, or small stick, as instruments proper to be used for the correction of slaves. To [so] strike, therefore, with a pistol, . . [165] constituted such a beating as . . was punishable by indictment, . . The jury . . found the defendant guilty." New trial refused.

Wilson v. Ferguson, Cheves 190, Spring 1840. [191] "The objection to the woman was an enlargement of the abdomen. . . her value was materially impaired . . but she did her full work."

Seibles v. Blackwell, 1 McMullan 56, Fall 1840. [58] "physician's bill and funeral expenses [of a slave], amounting together to $16;"

Percival ads. Herbemont, 1 McMullan 59, Fall 1840. Herbemont "was entitled to the slaves . . for life. He died in June. . . a difference of opinion arose . . as to which . . negroes the plaintiff [administrator] was entitled to retain under the Act [of 1789[2]] . . [Evans, J.,] [60] "charged the jury, that the word *crop* . . meant any annual product . . the result of culture; . . wine . . included . . Yorick was a vine dresser, and did nothing but attend to the vineyard; Glasgow split rails about a month; and . . in June, he was ditching at the farm, . . after that he, as well as the rest, worked in the field . . William was a cooper and jobbing carpenter; George was a small boy, thirteen years old, and employed as a house servant. . . At the season of making wine, all the negroes were usually employed at that business;" The jury found for the plaintiff:

[60] "4 months hire of Glasgow, from 1st August to the 6th December $48,00
3 do. Yorick, 1st Sept. to 1st Dec..... 36,00
1 mo. William, carpenter, ... 20,00
4 mos. Silvia, 1st Aug. to 1st Dec..... 24,00
4 do. Camilla, ... 24,00
4 do. Malvina, ... 24,00
4 do. boy George, ... 12,00
2½ do. Moses, 15th Sept. to 1st Dec..... 20,00"

Held: [65] "in South Carolina the usual crop [in 1789] . . consisted of tobacco, indigo, rice, and indian corn, . . put in the ground after the first of March, . . The slaves were . . to be retained to . . gather a crop . . planted . . by . . administrator . . Before March, hands are usually employed in clearing, repairing fences, breaking up land, and preparing for a crop; . . [but] the plaintiff [has] recovered for more hands than were employed about any crop, and for time beyond [the finishing of the crop] . . the hire of Yorick and Moses [employed

[1] Act of 1740, sect. 45. P. L. 173.
[2] 5 St. at L. of S. C. 111.

in the vineyard] after the vintage . . and for George, . . never employed in the crop. . . [66] should [plaintiff] . . think proper to release [sixty-eight dollars] . . the verdict . . is affirmed for the balance." [Butler, J.]

Grimke v. Houseman, 1 McMullan 131, February 1841. The defendant [132] " undertook, by unauthorized violence, to redress the grievance of his own slave, not at the time when the insolence complained of was offered, but with deliberation, he pursued the plaintiff's servant, and beat her in her own house." The jury found for the defendant. New trial granted.

Wesner ads. Guardian of Tom Brister, 1 McMullan 135, February 1841. Tom Brister, a free person of color, resident in Florida, executed an instrument of writing to Yeomans: " Know all men by these presents, that I, Thomas Brister, colored man, . . in consideration of . . Yeomans having paid certain sums of money for me, viz: two hundred dollars to . . Stevens: thirty dollars to . . Colson, and divers other sums . . all for my interest, happiness and welfare, I do hereby bind myself to serve Mr. Yeomans as a laborer for . . five years from . . date . . and . . further promise that if he . . sells my said time for five years, to any other person or persons, then I will . . serve them as a laborer, to the best of my abilities, until said time is out. Given under my hand and his seal, in . . Jacksonville, . . 1839. Thomas X Brister, [L. S.] Signed, mark sealed and delivered in the presence of . . Fernandez. . . Bisbee." (136] " Yeomans, . . assuming to be the absolute owner of Brister, sent him to . . [137] Gadsden, a broker, to be sold as a slave. . . Gadsden committed him to the work house of Charleston . . for safe keeping until he could effect a sale. Yeomans' instructions were that Gadsden should sell Brister to some one who would carry him to New Orleans, stating that Brister would endeavor to make such statements as to procure his discharge, but that Gadsden must not believe him, etc. After Brister was committed, he made such communications as to induce the keeper of the work house [defendant] to write to one Archibald Clark, residing in Georgia, to know if Brister was a free man, as stated by himself. Clark returned an answer saying that he was, and that he (Clark) was his guardian; . . Gadsden wrote to Yeomans . . [who] sent the contract, . . Gadsden . . paid the fees of the work house, and . . discontinued any further . . control . . the plaintiff was put to his action of ravishment of ward, allowed by the Act . . of 1740, . . to try Brister's right to freedom." [135] " The jury established the freedom of Tom,"

New trial refused: [137] " Wesner received the plaintiff into custody, without any wilful participation in the infamous fraud attempted . . [138] justified in receiving Brister . . But this justification ceased after Gadsden . . discontinued his control . . From that time the defendant held him on his own responsibility, or by the direction of the commissioners of the work house," [Butler, J.]

Sherman v. Barrett, 1 McMullan 147, February 1841. [154] "He had . . a large rice plantation, (658 acres,) and fifty slaves."

State v. Boise and Stuke, 1 McMullan 191, February 1841. Stuke, "the clerk . . was asked if he had not sold a bottle of wine to a negro girl, . . and he replied, yes. . . [192] scarcely anything to implicate . . [Boise] master of the shop. . . verdict of guilty." New trial granted Boise.

Caldwell ads. Langford, 1 McMullan 275, May 1841. "The facts that the defendants severally beat the plaintiff's negroes, with tickets, were clearly proven. The beating consisted in the infliction of about fifteen stripes with a whip. The negroes were at a store, on Sunday, behaving themselves peaceably and orderly; and the flogging was without any excuse, and done in mere wantonness of power." Held: [276] "a beating and abusing within the words of the Act of 1839, sec. 5,"

Sally Bugg v. Summer, 1 McMullan 333, May 1841. "action on an account for work and labor. Sally and Sam Bugg were free persons of color, and brother and sister. They lived and worked together. Both were industrious, and the surplus of their gains, after paying expenses, was employed by Sam in the purchase of some property."

Paris v. Waddell, 1 McMullan 358, May 1841. "the plaintiff . . borrowed a cart . . and sent two of his own negroes . . with it into the woods, to catch and bring home some wild hogs which he supposed he had a right to. . . [360] that plaintiff's negroes were under little or no controul or discipline."

Bell v. Lakin, 1 McMullan 364, May 1841. [365] "Robert, a slave of the plaintiff, a bricklayer by trade, escaped from him, in 1833, and remained out of his possession until after May 1838, when he was taken up in Columbia, by . . Sowden, who lodged him in gaol, where he remained until claimed by the plaintiff, who paid the gaoler's bill, $74, and the physician's bill for attendance on him while in gaol. He had . . a certificate, signed by the defendant, as his guardian, in which he was called Thomas Oree, and was stated to be a free man, and entitled to receive, as such, the proceeds of his labor. . . The value of the slave's services while absent . . was . . one dollar per day. The defendant clearly . . shewed . . that the negro man calling himself Thomas Oree, came into Lexington district in '32 or '33, as a free man, . . that he was . . employed by [men of high standing] . . as a bricklayer and a free man. . . 1837, the defendant was appointed, by the clerk of Fairfield, (in which the negro then resided,) his guardian, and he thereupon gave the certificate of freedom before spoken of. The jury were instructed . . [366] the plaintiff, having laid the defendant's acts to have been done with a *scienter* of the fact, that the negro was the runaway slave of the plaintiff, he could not recover without proof thereof, unless the law presumed the *scienter*. . . [367] the fact that the defendant found the negro in . . state of freedom . . exercised for years, rebutted the legal presumption of slavery arising from color, so far as the defendant was concerned, . . [368] The jury found for the defendant," New trial refused.

Young v. Burton, McMul. Eq. 255, May 1841. Held: [268] "That a bill well lies [in the court of equity] for the specific delivery of slaves, generally, which are withheld from the possession of the rightful owner." [262] "Can you go into the market, daily, and buy one like him, . . No. . . there are no two human beings, black, white, or mixed, which are exactly alike . . [263] But there are other considerations . . the ties . . by which the master and the slave are united. There is the faithful and kind old nurse, who watched over your infancy, with a tenderness and devotion little short of that which is felt by a mother, and who often supplied her place; whose value estimated by the market price, would be merely nominal. There is your body servant, who has faithfully watched over your sick bed, who, from experience, knows and anticipates all your wants. There is the honest, diligent, and faithful old slave, who has followed the fortunes of your family for two or three generations, . . [264] now worn down by decrepitude . . There is the more humble, but equally faithful and devoted field slave, who recommends himself to the regard of his owner, by implicit obedience to all his commands. These are not imaginary, but cases arising out of real life; and if a stranger, by force or fraud, obtain possession of them, are you to be told that your remedy is at law; and that, with the damages which you recover, you may supply their places in the market?" [Johnson, Ch.]

Glover v. Hutson, 2 McMullan 109, December 1841. "about 1837 . . sold . . a negro woman . . for . . $700."

Commissioner v. M'Whorter, 2 McMullan 254, February 1842. "Bob ['between 50 and 60 years of age'] was sold [for partition] for $670, or $680, his full value, . . for Dr. Terrant . . for a short time before the sale, Bob had a wife at Dr. Tarrant's [*sic*]." Bob's death "took place in four or five months . . he was short-winded, . . swelled, . . Connel proved . . he . . frequently seemed to be unwell; he thought it deception. . . [256] the jury . . found for the plaintiff [on the question of soundness]."

Braveboy ads. Cockfield, 2 McMullan 270, February 1842. [271] "the negro was carried off . . in the day time, but privately, when the family were absent from home." [274] "by men who pretended, but who in point of fact had no claim to him."

Porcher ads. Caldwell, 2 McMullan 329, February 1842. An auctioneer testified: "$350 is a large price for her, if she were sound . . because she is at least forty-seven . . [330] that a first rate cook would be worth $500; . . Colcock would have given $600, if she had been willing to live with him; . . [331] At auction [in 1841] the woman declared she was unsound [[329] 'commencement of cancer']; Caldwell bid $350; . . she had been in his employ;" Held: he can [333] "maintain no action on the implied warranty."

Carmille v. Administrator of Carmille, 2 McMullan 454, February 1842. [455] "deed [by Carmille] . . 26th February, 1830 [a few days before his marriage], . . for a nominal consideration, assigns to the de-

fendants, Pringle and Chartrand, . . 'Henrietta [and her four mulatto children], Charlotte, Francis, Nancy and John,' on the special trust, . . and condition, that they will . . permit . . the negroes . . and also the future . . increase of the females, to seek out and procure employment, and to work out for their own maintenance . . and further, in trust, to allow them . . to receive . . for their sole . . benefit, all such moneys as they might obtain for their labor, or otherwise, 'after paying to the trustees . . one dollar per annum, and no more.' . . second deed . . on the same day . . purports to convey to the same trustees the slaves Tilly and Mary, in trust, to apply their labor to the use of Henrietta and her children, until her youngest child shall come to the age of twenty-one years, and then to sell . . Tilly and Mary, and divide the proceeds between Henrietta and her children, share and share alike. These deeds were not . . recorded, until 22d July, 1833, after the death of Carmille [in that month]." His wife died about January 1831, [455] "leaving the complainant surviving her, the issue of the marriage." [454] "a paper was propounded for probate, as his will. It was dated . . 1832 [?], and by it he gave all his estate to . . Henrietta, and her children, directing his executors to emancipate them, if it could be legally done, and if it could not be done within fifteen years, to send them away, and set them at liberty in some country where it could be done. The paper was rejected, on the ground, that subsequent to the execution, Carmille had married, and had issue. . . [455] On the death of the intestate these slaves went into the possession of the defendants, . . under [the] deeds . . The object of this bill is to set aside those deeds," Chancellor Dunkin held, in 1839, [456] "that the bill of sale . . is an undisguised attempt to evade the law of this State, forbidding emancipation, . . The trusts . . fail. . . decreed, that the negroes . . be delivered up by the defendants," They appealed. Grimke, for the "motion to reverse the circuit decree:" [457] "The condition is subsequent, . . By the execution of the deeds, the estate became immediately vested. . . [460] It is said, however, that to sustain the deed is contrary to the policy of the country, and at war with our peculiar institutions. . . I deny . . Besides, if presumptions are to have any weight, I would ask of the parties before the court, which is it most likely would be most willing to carry out this attempt to evade the law; viz. whether the defendants, perfect strangers to the negroes and to Carmille, would be most anxious to fly in the face of the law of the land, or whether the complainant [Julia, daughter of Carmille,] would be willing to hold in the bonds of servitude, and bind with the chains of slavery, two brothers and sisters of the half blood. So much for the morale and policy of the case, with which however we have nothing to do. . . [464] Henrietta being a slave, his children by her are not bastards in the eye of the law; the A. A. then of '95 does not apply."

[472] "The motion to reverse the circuit decree is granted, and the complainant's bill is dismissed." [471] "Both deeds are . . good . . unless by the Act of 1841,[1] . . they are rendered inoperative. . . I think

[1] 11 St. at L. of S. C. 154. "Carmille *v.* Carmille, and similar cases, led to the Act of 1841." [Dargan, Ch., in Broughton *v.* Telfer, 3 Rich. Eq. 431 (436).]

all its provisions are future." [469] "They still are slaves, . . [470] if Pringle and Chartrand [the defendants] ever relax their hold . . they would be liable to seizure, . . Kindness to slaves . . is the true policy . . *Nothing will more assuredly defeat our institution of slavery, than harsh legislation rigorously enforced.* On the other hand, as it hitherto has been, with all the protections of law and money around it, it has nothing to fear from *fanaticism abroad or examination at home.* If . . a man dared not make provision to make more comfortable faithful slaves, hard indeed would be the condition of slavery. . . The only thing which could effect [*sic*] [the second deed] . . would be the unlawfulness of the trust, if it be unlawful. . . [471] Looking back over our legislation, and our decided cases, and the usages of our people, I think we are well sustained in saying *that a slave may acquire and hold . . personal property, (not prohibited . . by Act of the Legislature) with the consent of the master . . in law to be regarded as the property of the owner"* [O'Neall, J.] [472] "Johnson, Harper, Richardson, Evans, Earle, and Butler, CC. and JJ., concurred."

Bowers v. Newman, 2 McMullan 472, February 1842. George Galphin, by his will, dated April 1776, [474] "gives freedom . . to all legatees or devisees not then free, and especially to Barbara, daughter of Rose. Then having given freedom to two mulatto girls, and one Indian, (daughter of Natechuchy) . . he leaves . . land, and . . twelve to twenty slaves, with their . . increase, to Thomas and Martha Galphin, children of Rachael Dupee, and to George and John, sons of Maturney; . . under . . limitations . . as in [case of] . . Barbara. . . to Judith, daughter of Maturney, . . lands, with eighteen slaves, . . under [same] limitations, . . to Barbara . . during her . . life . . the use of the lower half of . . thirteen or fourteen hundred acres, . . called Silver Bluff . . seventeen slaves, and their children, and . . increase, . . [475] 'in case any of the six Devisees . . die without having issue or their issue die: . . the land to be shared between . . George, Thomas and John: and the slaves . . between the said six devisees and their heirs.' . . In the first codicil [1778], . . 'I revoke that part . . wherein I leave . . Barbara . . Silver Bluff . . In lieu thereof, I leave her . . upwards of three hundred acres.' . . in the third codicil [1780] he gives . . Barbara five slaves and their children, and future issue," The testator died in 1782; Barbara, in 1830, [473] "leaving the plaintiffs, the issue of her marriage with [a white man] . . also then dead;"

Held: [486] "a free person of colour, by the laws of this State, may take and hold, convey by deed, dispose of by will, or transmit to his heir at law, both real and personal estate. . . [487] as soon as from lapse of time the assent of the executor to the legacy of freedom might be presumed, and the claims of creditors to be satisfied or barred, . . her title became . . perfect. . . [489] the words of the codicil . . created a fee." [Earle, J.]

Mathews v. Mathews, McMul. Eq. 410, February 1842. "Mathews, a free person of color, by his will, . . 1831, devised . . a house and lot

in Charleston, and several slaves, to his five younger children, reciting by his will, that he had purchased the freedom of their mother, in 1817. He appointed Mrs. Martha Ann Mathews [his widow] and . . [411] Elliott, . . his executor and executrix;"

Norris v. Shroeder, McMul. Eq. 422, February 1842. Held: [429] "the keeper of the work house in [Charleston] . . was bound to receive the slave" [1] but he "shall be regarded, not as the agent of him who delivers the [slave,] . . but as a stake holder for the true owner,"

Thomasson v. Kerr, 2 McMullan 340, May 1842. The owner of "fifteen or eighteen negroes" removed with them to Alabama.

Littlejohn v. Jones, 2 McMullan 365, May 1842. [366] "that no ferryman was kept there, that the miller, a negro with a wooden leg, put over such as desired, and accepted what was offered, which he kept;"

State v. Turner, 2 McMullan 399, May 1842. "The trading was proved, both by Wever and Hearn, who had purposely sent Isom [Wever's slave] with the [two bushels of] wheat in a bag. They saw the bag carried into the lumber room of the defendant, after it had been laid for a few minutes by a fence, and heard it poured out—listened to the conversation between him and Isom in defendant's store, and saw the delivery of the [half a pound of] coffee and [two pounds of] sugar by him to Isom." The defendant was found guilty.

Felder v. Railroad Co., 2 McMullan 403, May 1842. [405] "The plaintiff's slave [a plough boy], endued with ordinary intelligence, and acquainted with the . . manner of using the Rail Road, voluntarily laid himself down on it and went to sleep, amidst grass so high as to obstruct the view . . the engine . . passed over and killed the slave." [404] "The supposition on the part of the defendants was that he had been killed by the plaintiff's driver, and laid upon the road, so as to permit the engine to pass over his body. . . [405] The jury found for the plaintiff the value of the boy."

Devlin v. Killcrease, 2 McMullan 425, May 1842. Defendant said "his boys [slaves] had cut some rail-timber and some poles for chimneys [on plaintiff's land]. . . would have to go to law. He . . could buy him [plaintiff] and all he had, if they were black:"

State v. Jackson and Montgomery, 1 Speers 13, November 1842. "indictment against the defendants, for a riot, committed by them with a slave . . Brown [the prosecutor] had cut some house logs, . . The slave . . was found by [him] . . splitting rails upon the land which he claimed; he ordered him off. . . his employer, Jackson, . . proceeded to the place . . cut a club, and ordered Montgomery [also in his employ] and the negro to cut up the . . house logs, which they did."

Held: [14] "a negro slave . . [may] be one of the three persons necessary in law to constitute the offence 'a riot.'"

[1] Ordinance of May 8, 1807. City Laws 255.

Brock ads. Sims, 1 Speers 49, November 1842. [50] "The negro was an old man when sold, [at sheriff's sale, for $31.] . . he was a coarse shoe-maker. . . worth $300 or $400, and his hire $30 or $40."

Thompson, Executor of Farr, ads. Farr, 1 Speers 93, November 1842. See Farr *v.* Thompson, p. 375, *supra.*

Pressly v. Hunter, 1 Speers 133, November 1842. "1839, . . overseer, . . he was to have $200 certain, and more, if his crop exceeded 40 loads of corn and 40 bags of cotton."

Ruff v. Thomas, 1 Speers 163, November 1842. [165] "In 1822, . . Murphy was Mrs. Sims's overseer; he said that the girl was put into the crop by her; in the course of the year he whipped her, and the plaintiff's wife, who was then a little girl, cried about it; the old lady asked him not to whip her any more, as she was Amanda's (Mrs. Ruff's) property, and when she was whipped it made a fuss in the family. . . In 1829, a Mr. Thomas overseed for Mrs. Sims;"

Jewell v. Jewell, 1 Howard 219, January 1843. "About the year 1794 or 1795, . . Sophie Prevost . . with her family . . emigrated from the West Indies to Savannah. . . [221] they brought with them some negroes,"

Commissioners of Roads v. McPherson, 1 Speers 218, May 1843. "the defendant's overseer was notified regularly to send his hands (twenty-three) to work on the road in November. They were not sent, inasmuch as their services were needed on the plantation; . . The board [in 1841] . . fined him $115,"[1]

State v. Isaacs, 1 Speers 223, May 1843. "The defendant was indicted for selling [a horse] to a slave . . [The overseer, whose duty] was to give the negroes tickets, if any were needed . . was present, and assented . . The presiding Judge instructed . . this did not dispense with a written permit,[2] . . The jury found the defendant guilty."

Johnson v. Boon, 1 Speers 268, May 1843. Report of Judge O'Neall: "tax execution . . was about to be enforced . . against the relators, as free mulattoes. They . . obtained a prohibition *nisi,* on the ground . . free white men, but were ordered to declare in prohibition. . . Thomas and John, were in court, and submitted themselves to the inspection of the jury. . . Henry, . . darker . . is the overseer of Col. Perry, . . crop was about being planted, and his employer was not willing he should attend court. . . sister [of their mother] . . was shewn . . I should say, was a quadroon. The father . . Benjamin Johnson, (a white man,) proved that the relators were his children by Sally Johnson. She was the daughter of Lydia Tan, by . . a Dutchman, . . her second husband. Lydia Tan's mother was a white woman; her husband, Tan, was a colored man. . . [269] On inspection, I thought Thomas and John very passable white men. Thomas, particularly, had light or sandy hair, and a sunburnt complexion. . . Their father, themselves, and the whole

[1] 9 St. at L. of S. C. 561.
[2] Act of 1817, sect. 1. 7 St. at L. of S. C. 454.

family, proved excellent characters. The father was a Methodist local preacher. . . On the part of the defendants, . . proved by Mr. Warren, who had caused the relators to be expelled from Captain Snipe's company of the Round O, . . When he went into the settlement [St. Paul's parish], fifteen years ago, . . The relators . . had always been regarded *as colored*. . . They associated with white persons, but never without question. . . [Another witness said] Thomas . . voted once for Sheriff, and that . . Waring took his vote out of the box, and scratched his name off the list. He, the witness, had visited the relators, had associated and eat with them. . . Price proved that the relators *were colored*; but he always spoke to them when he met them. From the proof, it seemed in the section where the relators were raised, that little attention, in intercourse, was paid to the question whether the persons *were or were not* colored. The jury . . [270] were told, . . Color . . was sometimes a deceptive test; that it ought to be compared with all the circumstances . . and if the jury were satisfied that the color, blood, and reception in society, would justify them in rating the relators as free white men, they had a right to do so. . . that when men had been acknowledged as white men, and allowed all their privileges, it was bad policy to degrade them to the condition of free negroes. The jury *very properly* found the relators to be free white men." New trial refused.

State v. Meyer, 1 Speers 305, May 1843. "indictment under the second section of the Act of 1837, . . on a Sabbath day in . . 1840, . . [306] witness saw a negro coming out of the gate with a parcel . . opened the parcel, and found a pair of suspenders which the negro had bought there. . . Verdict, guilty."

Rodrigues ads. Habersham, 1 Speers 314, May 1843. "Hannah [sold in 1840, for $550] was represented as . . a good washer and ironer, and the only reason the defendant gave for selling her was, that he had too many in his yard, . . The plaintiff residing in . . Georgia, . . [315] hired her to . . Wiley . . [who] reurned her at the end of two months . . too sickly . . The plaintiff put her to dropping corn . . After . . three weeks, . . in very bad health, . . subjected her to the examination of two Doctors, . . seriously diseased in the ovaria and uterus, having schirrous tumors . . cancerous . . incurable. . . was brought to Charleston . . several physicians examined her, . . [316] [one] thought . . [the tumors] might, and did, probably have their origin from working in the field, . . Hannah was re-sold at the risk of the former owner, and brought $103. Her purchaser . . says that he hires her out at $6 a month, and that she is capable of doing tolerable labor. . . [317] a compromise verdict."

Johnson v. Basquiere, Justice; *Miller v. Boon, Tax Collector*, 1 Speers 329, May 1843. "In the first of the . . cases, the defendants . . were about to try the narrator as a free person of color, . . he had filed his declaration in prohibition, . . alleged . . he had a right to occupy . . the *status* of a free white man . . was in court, and had the appearance of a white man. He has been a member of a volunteer company, and

had voted at the general election for members of Legislature. . . [330] lineage on his father's side, . . of white, and rather respectable people. His mother, Mary, was the daughter of . . Nancy Patrick, . . Patrick, who had married Nancy, was regarded a colored man, . . but . . Patrick never claimed her, . . her mother said she was the child of an Irish schoolmaster, . . so generally regarded. Nancy['s] . . father was a white man, who married Elizabeth Tan, the great grandmother of narrator. . . a colored woman, with thick skin and long hair; . . originally from North Carolina, and claimed to be an Egyptian." [329] "The counsel for the narrator . . moved to discontinue his proceedings without publishing the verdict, . . suspected . . unfavorable . . This motion was granted . . [330] In the second case . . the question was, whether the narrator was subject to a poll tax imposed on free persons of color, of African origin . . the narrator produced . . proceedings in prohibition, . . before Judge Bay, . . 1836. . . [He] granted a writ of prohibition, restraining the tax collector . . upon the alleged ground, that the narrator . . and his wife . . were exempt . . as the descendants of Egyptians. . . The Solicitor had the narrator called . . appearance was that of a mulatto. . . the counsel for narrator moved to discontinue . . preferring to rely on the judgment of Judge Bay, rather than to trust his client's color, before the jury. . . [331] granted" Affirmed in both cases.

Hockaday ads. Willis, 1 Speers 379, May 1843. [380] "that he played at faro with Wilson in December, 1840; . . lost $1200, an order for $800, and a watch . . besides the two negroes which he refused to deliver, because he was cheated. . . The negroes were in the stable occupied by all of them." "The prices fixed . . were $950 each,"

Lindsey v. Bland, 2 Speers 30, December 1843. At a sale in 1841 the defendant purchased John, [31] "at . . 610 dollars, . . John has now . . an irreducible hernia. . . Dr. Burt . . thought it existed prior to the sale. . . would think the value diminished one half; . . [32] a verdict for the plaintiff, for the whole amount"

Rogers v. Randall, 2 Speers 38, December 1843. "1832, . . in consideration of $300, executed an absolute title of Lydia, then ten or eleven . . [39] 1841, . . Lydia had . . two children, the oldest . . about four [in 1842] . . the other about two; a third has been born since the commencement of this suit. The estimates of value . . the woman's . . in 1838, from $400 to $600;" "at the trial [in 1842], from $350 to $500; . . the two children, from $200 to $400. The hire of the whole was estimated by some, at $30 a year, and by others, at not more than the cost of good treatment."

Caldwell v. Wilson, 2 Speers 75, December 1843. [77] "that he had given Lucy and her children to Mrs. Caldwell, and that the day she came for them, when she was about starting home, the negroes made such a *fuss,* that he got her to leave them; that they were hers, and that he was raising them for her,"

Suber v. Vanlew, 2 Speers 126, December 1843. [127] "The plaintiff . . overseer . . had quit the place, because a negro woman had told the wife of defendant [employer], that the plaintiff was too familiar with her or some other woman of the place, and the defendant's wife had believed the tale—and that he felt above any such thing."

Held: [128] "such tittle tattle . . would [not] form any justifying cause" for breaking his contract.

State v. Brown, 2 Speers 129, December 1843. [131] "Hetty belonged to Charlotte Hinton, of Lexington. For about nine years, she had been allowed to hire her time about Columbia, and do pretty much as she pleased. For the last three years . . she had been hired by . . Taylor (the brother of Charlotte Hinton,) . . in Fairfield, . . by whom the woman had not been suffered to act for herself in any way." The prisoner, who had previously been employed by Taylor, put Hetty's clothes and bed on a wagon going to Columbia and they followed after. She was [131] "apprehended and was [put] in Columbia jail." [130] "The prisoner was indicted under the Act of 1754,[1] . . 2nd. In aiding such slave to run away . . [131] The jury convicted the prisoner on the second count" Motion in arrest, dismissed; new trial refused.

State v. Hill, 2 Speers 150, December 1843. [151] "The defendant was indicted for an assault and battery on, and false imprisonment of, Judah Bowser, and her daughters, Malinda, Tabitha and Lizzy, free negroes. . . 1842, a gentleman who had heard that the negroes were about to be carried off, pursued and overtook them . . short distance from . . where they lived. The negroes were in two little wagons, . . accompanied and controlled by two men of the name of Smith, whom the defendant had employed to take them [to Georgia.] . . The defendant was a short distance ahead, and when overtaken . . said he was taking them to Georgia. The negroes manifested great unwillingness to go. . . [152] they said, 'he was dragging them off.' He was advised to return the negroes to their home, and assert his claim legally, if he had any. He refused . . said he had a bill of sale or titles, and offered to shew whatever might be his claim. He, (the witness,) told him, . . that Wm. Worthy . . had had the care of those negroes, and that his executor, Preston Worthy, had succeeded to the same care. This gentleman, (Herndon Chalk,) finding he could not prevail, by reasoning and persuasion, . . returned home. The defendant and his party were pursued by Wyatt and Preston Worthy, and Uriah Wright. The negroes and the Smiths were overtaken . . in Newberry district. . . the old woman, Judah, and the other three women, were walking, followed by one of the Smiths, who was urging them on. The old woman was crying. The defendant was not in company when they overtook them. . . [153] The defendant soon came up, claimed the negroes, said they ought to be his, if he could get his right. He . . offered to shew his supposed title. . . told the prosecutor, Preston Worthy, that if he had known he had any thing to do with the negroes, he (defendant,) would not have troubled them. From 1809, to . . 1842, thirty-three

[1] 7 St. at L. of S. C. 426.

years, the old woman, Judah, and her family, had lived and passed as free. In 1826, a recovery in Fairfield district was had against Richard Hill, the defendant's father, . . Mobley, and [154] Meadows, in writs of ravishment of ward, establishing the freedom of Malinda and two other children of Judah. The pleading in that case shewed, that Judah had once been the slave of Mrs. Funderburk [great-grandmother of defendant], by whom she had been manumitted, by deed, in 1809. This deed was procured by the defendant and his brother (some short time before the negroes were seized,) from the clerk's office, . . and taken to the office of Mr. Hammond, who returned [it?] to the clerk's office, and there examined it. The last time he saw it, it was in the defendant's possession. He subsequently searched the clerk's office for it and it could not be found. He also searched the records, and could not find it on record. . . [156] The presiding Judge instructed . . [157] That after twenty years of uninterrupted enjoyment of freedom, the law would presume every thing done which was necessary to give it effect. . . convicted" Motion in arrest, and for new trial, dismissed.

Elwell v. Bradham, 2 Speers 168, December 1843. "deputy sheriffs . . took from the arms of the plaintiff, a little negro, . . hurt her much in the struggle."

Reaves v. Waterman, 2 Speers 197, December 1843. [199] "while . . Captain [Thomas] was steering for the buoy, a negro of the defendant's named Marsh, (who . . was a pilot, and had been sick in Charleston, and was coming to Georgetown with Thomas to his master,) cautioned the Captain that if he went where he was going, he would go upon a breaker, when Thomas said it was flood tide and he could go over any where;" The vessel was wrecked.

State v. Dozier, 2 Speers 211, December 1843. Dozier stabbed Pettigrew. [213] "He said it occurred from a spree the night before; that P. had protected some negroes he wished to whip,"

McCracken v. Hair, 2 Speers 256, December 1843. The overseer [257] "had improperly struck a small boy on the head; . . cruelly treated a woman;" He was dismissed.

Buchan v. James, Speers Eq. 375, December 1843. Will of the Rev. Robert Buchan of Virginia, who died in 1803: [383] "I give to the negroes that may be in my possession when I die, their freedom, after the crop on hand is finished, and the other property, which I may then possess, is all sold. It is my will also, that they should be dismissed well clothed; and that each of them shall be furnished with an axe and a hoe, at the expense of the estate. Should I die, however, before Jesse, and the boy Dudley, are twenty-five years of age, I give their services to Mr. Sidney Wishart, till they arrive at the said age . . after which, it is my will they shall be free. . . I give to the negro man, Tom, my wearing apparel."

State v. Commissioners of New Town Cut, 2 Speers 402, January 1844. [403] "whereas the able-bodied male slaves belonging to the relator,

were liable to work on the said Cut, and the said slaves having been duly summoned [in 1840] to work thereon, . . [404] he did not send his slaves," He was fined $12.

City Council v. Cohen, 2 Speers 408, January 1844. In 1837 Cohen bought Bella and her son for $675. They were warranted sound. [411] "an alderman . . committed Bella to the poor-house, . . January [1838], . . discharged . . February, 1838;" [408] "was brought to the guard-house as a maniac, dangerous to the neighborhood, by the habit she had of throwing pieces of fire about her room, . . committed [by the mayor] . . to the maniac department of the poor-house [March 1, 1838]. . . [409] fed, clothed, and provided with all needful attendance . . [at] 50 cents per day . . [410] Cohen . . tendered both slaves [to the vendor, who] . . refused to accept them back, whereupon" [409] "an action of covenant was brought . . alleged . . that at the time of the sale . . Bella was subject to insanity . . verdict . . for the plaintiff" for $675 plus interest; damages $370.95; value of boy deducted $250. Cohen [410] "paid $236 50 to the time of verdict . . 31st of May, 1839." In 1840 he wrote "the Master and Commissioners of the Poor-House . . declining any further responsibility" In June 1841 the city council brought this action [408] "to recover three hundred and eighty dollars . . for the meat, board, lodging, necessaries, care and attendance . . from 31st of May 1839, to June 30th 1841,"

Held: [415] "the verdict [of 1839] . . left Cohen . . still owner of the slaves. . . [416] clearly liable for her support . . [417] as well after as before the notice,"

Gyles v. Valk, 2 Speers 460, January 1844. [462] "There was . . a plantation in Georgia, and about 168 negroes; . . [463] of which the negroes were set down at $63,000. . . In January, 1837, . . [464] no immediate prospect of effecting the sale of the land, and if the negroes were sold off, the mills and plantation would be left exposed, . . value would be greatly diminished. . . [465] By [William] Wightman's will [in 1835], certain slaves were given to the executors, with a request that they should be allowed the control of their own time, and some provision was made in the will for their maintenance."

Mordecai v. Gadsden, 2 Speers 566, January 1844. [568] "he removed 30 or 40 of his negroes . . into Florida" about 1841.

State, ex rel. Wilkinson, v. City Council, 2 Speers 623, May 1844. "Francis Wilkinson, a free person of color, is a . . resident of Charleston Neck, . . his employment is to kill and prepare meats, which he . . vends in the market of . . Charleston. . . he pays the regular monthly stallage" Held: he must pay the "capitation tax, under an Ordinance . . [of] 1843." [1]

Jeter v. Askew, 2 Speers 633, May 1844. "The defendant said of plaintiff, he is a dam'd rascal, and has been trading with negroes."

[1] [625] "That . . free persons of color . . are . . liable . . [626] residing without the city, exercising his trade . . therein, each a tax of ten dollars."

State v. Bowers, 2 Speers 671, May 1844. "Yancey employed and directed Adam [his slave] to test the dispositions of the defendant—he and Butler watched, and heard the conversation of the defendant with Adam—ten o'clock at night. Defendant finally told Adam to take the corn into the kitchen. . . Yancey and Butler . . found the corn there" Guilty.[1]

State v. Minor McCoy, 2 Speers 711, May 1844. [712] "indictment[2] . . 1st. for inveigling, stealing and carrying away . . Enoch, Jinney and Mary, . . property of . . Spann. . . 2d. . . for aiding Stephen McCoy . . The negroes went out of their owner's possession, in Sumter district, on the night of the 13th of May, 1837. They were returned . . by the party [of four] who went after them, . . in February, 1838. They found the negroes in Hellhole Swamp, Charleston district, at the plantation . . of Charles G. McCoy, . . brought to him in August, 1837, by Stephen McCoy; the prisoner came . . January, 1838, and sold the negroes to him [their names being changed in the bill of sale] for $1500. . . The prisoner lived . . within four miles of the prosecutor Spann. . . [713] knew . . Enoch, as the property of Mr. Spann, who communicated to him the fact, that his negroes had been stolen, after they left his (Spann's) possession. . . The jury found the prisoner guilty, but recommended him to mercy." New trial refused.

Mayor ads. State, ex rel. Adger, 2 Speers 719, May 1844. [727] "Adger, resides on Charleston Neck, . . Commission Merchant, within the city. . . complains, that . . his carriage driver, Pompey, is taxed at seven dollars, and his slave, Thomas, who works in the city, in virtue of a city badge, also at seven dollars; . . four dollars [and a half] more than the general tax laid on similar property of the inhabitants of the city, ($2 50.) . . [728] obliged to pay for Thomas's badge, double the price required of the inhabitants,"

Held: the tax on Pompey is [731] "clearly beyond the taxing power given to . . the Mayor and Aldermen.[3] . . [735] "arrest . . also the excess of the tax laid upon Thomas,"

State v. Simons, 2 Speers 761, May 1844. [765] "Eliza Kohne is the owner of a slave called Emma, who had been seized by a constable, under an information made by . . Simons, to the magistrate, . . and had been carried before him to be condemned, as forfeited by the owner, for being taken by her mistress to the north of the Potomac,"[4]

Held: the act of 1835, sections 6 and 7, is unconstitutional, not being sanctioned by the law existing at the adoption of the state constitution, and not proceeding by the common law mode of trial by jury.

Ward ads. Waller, 2 Speers 786, May 1844. About 1812 Waller, [787] "in payment [for land], gave Jack, then about seventeen . . at four hundred dollars, . . a high price . . [788] was put to the black-

[1] Act of 1817.
[2] Under the act of 1754.
[3] Act of 1836.
[4] Act of 1835, sects. 6, 7. 7 St. at L. of S. C. 472, 473.

smith's trade . . name was changed to Julius. . . [789] that Jack is a very capable and trusty fellow; . . now [1842] worth at least one thousand dollars, and his annual hire two hundred dollars; and that, in 1837, he would have sold for one thousand five hundred dollars, or more."

Iorr v. Hodges, Speers Eq. 593, May 1844. Marriage settlement upon the bride, of seventeen negroes "possessed [theretofore], in her own right,"

Miller v. Yarborough, 1 Richardson 48, December 1844. Action on an implied warranty. "The defendant . . at the Sale Day in February, 1843, . . conveyed to [plaintiff, a negro boy] . . at the price of $462 50. . . lame, from a wound in the foot with a nail, but no deduction was made . . At the request of the plaintiff, Dr. Norwood examined . . thought it slight, . . The sale was concluded soon after [without any warranty of soundness in the bill of sale.] . . The weather was exceedingly cold, the boy badly clothed, and wore an old pair of boots; all of which, no doubt, aggravated the wound. . . sent by the plaintiff to . . house . . [49] well taken care of. Two days after, he was affected with convulsions; medical aid was called in, but he died . . with lock-jaw, . . The jury found for the plaintiff $450,"

New trial granted: [52] "no implication of warranty"

Farr v. Gist, 1 Richardson 68, December 1844. [72] "Mr. Gist . . did not disguise the fact that he wished to sell [two negro girls] . . because they had an objectionable habit, that of eating dirt, and which, in his opinion, rendered them unprofitable as breeding women." He received $1000 for the two, in January 1842. One of them, Linder, [70] "was ploughing when the trade was made," [69] "the defendant drew a receipt for the purchase money . . in which he stated . . [they] were dirt eaters. This plaintiff objected to, saying he wanted to sell . . [70] and it might injure their sale," Linder [69] "was sick the first day after she went to plaintiff's; . . died, about the first of April . . [having been] taken with a hemorrage [*sic*] and jaundice . . [doctor] was satisfied that the remote cause . . was from eating dirt."

Held: no implied warranty of soundness.

O'Neall, Executor of Farr, ads. Farr, 1 Richardson 80, December 1844. See Farr *v.* Thompson, p. 375, *supra.*

Gordon v. Blackman, 1 Rich. Eq. 61, December 1844. Johnston, Ch.: "This is another of those cases, multiplying of late with a fearful rapidity, in which the superstitious weakness of dying men, proceeding from an astonishing ignorance of the solid moral and scriptural foundations upon which the institution of slavery rests, and from a total inattention to the shock which their conduct is calculated to give to the whole frame of our social polity, induces them, in their last moments, to emancipate their slaves, in fraud of the indubitable and declared policy of the State. The late Samuel McCorkle . . at his death, . . 1839, left . . slaves, and a will, . . [dated] 1837, . . 'I direct my executors . . to hire, by the year, all of the [four men] negroes [children of Lydia] . . until the hire . . shall amount . . sufficient to pay off all . . debts . . it is my

desire for . . Lydia, to work for the support of herself with her two children, . . until they shall be able to work; God be pleased! . . further direct, that my executors apply to the Legislature . . [62] and use their best endeavors with the same to procure the emancipation of them all, . . and should they fail . . I direct [them] . . to transport all . . to the nearest non-slaveholding State . . or to the free colony in Africa, if they choose to go there to live. . . hire them out . . to pay off all reasonable expenses . . it is my desire for Lydia, that her [six] children . . shall help to support their mother, when she is unable to help herself by infirmities, . . that . . Lydia . . have . . my bible, my feather beds, my bedsteads, [and other furniture.]' . . The wench, Lydia, died before the testator. The plaintiff is the next of kin of the testator . . [63] prays an account . . that the bequests in favor of the slaves, and the benefits intended . . be declared void, . . The only obstacle . . is the provision for emancipating . . Whatever objections I may feel to this, and my repugnance is stronger than I can express, I am so bound by . . decisions,[1] that I cannot, on the circuit, venture to declare it void. . . [65] The complainant appealed"

Held: [66] "A trust must . . result for the next of kin." For "the testator's debts are not yet paid off. In the mean time, . . the Act of 1841 has intervened . . provides that every bequest directing slaves to be carried out of the State, with a view to their emancipation, shall be void. . . harsh to send these slaves to a new and uncongenial residence, when, as it is understood, they very much prefer to remain in their present situation. . . decree . . that after . . debts . . paid, and the Legislature shall have refused to pass the Act of emancipation . . the defendant deliver the slaves to the complainant, and account" [Harper, Ch.] "The whole court concurred." See Blackman *v.* Gordon, p. 398, *infra.*

Terry v. Brunson, 1 Rich. Eq. 78, December 1844. [80 n.] "1 fellow, 4 boys, 1 wench and child, and 1 girl, all valued [in 1784] at a sum equivalent in federal money to $1198 42, making the average value of the slaves $148 55."

McDonald v. May, 1 Rich. Eq. 91, December 1844. [93] "He sold two of the negroes purchased by him the same evening. . . that considering that the terms were cash, and that the sale was made in the summer [August 1830], the property sold well;"

McCollum v. Fitzsimons, 1 Richardson 252, January 1845. [253] "a charge [had been] made by the plaintiff, a city officer, that Fitzsimons had broken one of the police regulations for persons of his apparent caste, to which caste Fitzsimons denied he belonged," "feigned issue ordered" [252] "the defendant offered as evidence the record of a prosecution before a magistrate and freeholders in . . 1839, against the defendant, for returning to this State, contrary to the Act of 1835;[2] . . acquitted . . not a person of color. The recorder rejected the evidence . . jury . . found 'the defendant to be a mulatto.' . . appealed," New trial without prejudice, granted.

[1] Carmille *v.* Carmille, p. 381, and Frazier *v.* Frazier, p. 359, *supra.*
[2] 7 St. at L. of S. C. 470.

Nelson v. Whetmore, 1 Richardson 318, January 1845. "action to recover the value of a slave . . The first count was in trover; . . The defendant is a merchant of high character, who has often been heard to denounce abolitionism, and express opinions favorable to Southern institutions. He came from the North to Augusta, Georgia, in 1818—resided in Augusta till 1828—then removed to New York, . . but every winter usually comes to the South, (his main business connexions being with the South,) . . [319] In Nov. 1837, when the defendant spent two days at the Planters's Hotel, [Charleston,] the Boy Frank, then belonging to Calder, keeper of the Hotel, was a waiter in the Hotel. Frank is a bright mulatto; in 1841, 20 to 22 years old, freckled and with hair somewhat reddish. Porter regarded him as white, and said that he had every appearance of a white man, but every other witness . . thought him a mulatto, and those who were questioned on the subject, supposed that he could not pass as white. In November, 1838, the plaintiff bought Frank from Calder, at the price of $1200, and kept him at his place near Statesburg, as a house servant, until the night of 22d June, 1841, when, in the absence of the plaintiff on a visit to the North, Frank eloped, taking with him a horse, saddle and bridle. In the evening of 24th June, Frank, with his horse much tired, arrived at the house of M'Phail, a farmer, who lived near Randalsville, N. C., on the stage road from Cheraw to Fayetteville. He called himself Johnson, and . . being taken as a mulatto, said that he had been in the Florida war, as servant to some general officer, and was on his way to see his relations. He stayed all night there—sold his horse, saddle and bridle to M'Phail, for $20, and next morning . . departed on foot, saying that he intended to take the stage when it passed. On 25th June, the defendant reached Fayetteville in the stage, having come directly from Columbia through Cheraw. . . the probability seemed that Frank reached Fayetteville in the same stage with defendant; but if so, he did not stop at the stage office, where the defendant stayed. At Fayetteville, the defendant and Frank, each for himself, took a seat for Raleigh; Frank under the name of Jones—his mulatto color being noticed by the clerk, but not called to the attention of the stage agent, until the stage was starting. Together, and the only passengers in the stage, they reached Raleigh next evening. At the Hotel there, the defendant represented Frank to be his servant, and paid for his breakfast, and Frank demeaned himself, and was treated . . [320] by . . the hotel keeper, as a mulatto servant. The defendant and Frank went together to the Rail Road depot, Frank in charge of the baggage, and there the defendant represented Frank to be his colored servant, and paid to Whiting, the R. R. agent, for him as a colored servant—half price. At Weldon, . . Mr. Porter . . fell in with the defendant, whom he had previously known, and they travelled together to Washington City;—Frank, . . passing as white, and being represented by defendant, and taken by Porter, to be a white man who had been in Florida, and was on his way to see his relations, passing as a servant for cheapness. The defendant went on, leaving Frank in Washington. Soon afterwards, Frank went on to Baltimore with Porter, in the same capacity as he had attended defendant, and has

not since been heard of. . . When the plaintiff returned to New York, he had heard, by letters, of Frank's escape, and travelling with the defendant. . . the plaintiff called upon the defendant. The plaintiff had been much excited, but was then cool, and the conversation was civil, . . The plaintiff said that the defendant had been the means of the boy's escaping, and should assist in recovering him. The defendant . . said he would do all in his power. He stated that he had met the boy at Fayetteville—that the boy had represented himself as a free mulatto that had been in Florida, and had asked him to take him on as his servant—that the boy had desired *this for cheapness*; and that the boy had come with him to Washington, and there he had left the boy . . [321] Verdict for the plaintiff $1000." New trial ordered: [323] "essential to inquire whether the defendant knew Frank to be a slave."

Inglesby v. Beamer, 2 Richardson 425n., January 1845. "trover for a batteau ['worth $35 or $40'] . . built by a slave of the plaintiff, named Titus, on a lot . . occupied by the defendant . . [who] claimed the right to retain the batteau . . seven or eight dollars due by Titus to the defendant, . . for materials . . furnished . . [426n.] Decree for the plaintiff for $35."

Lemacks v. Glover, 1 Rich. Eq. 141, January 1845. Will, dated 1791: "in case my son . . should die under . . twenty-one . . or before marriage, I . . give . . to my Godson . . [142] ten negroes, to be taken in families,"

Tennant v. Stoney, 1 Rich. Eq. 222, March 1845. [224] "Mr. Stoney conveys [to trustees] . . four plantations . . and 380 negroes."

Dunlap v. O'Dena, 1 Rich. Eq. 272, March 1845. "1837, the defendant purchased . . stock in trade for . . saddlery and harness making business, . . [and] two negro workmen brought up to the said trade"

Edings v. Whaley, 1 Rich. Eq. 301, March 1845. Johnson, Ch.: [306] "Their moral qualities . . enter largely into their value, and who in this country has not witnessed how painful is the necessary or compulsory separation between the master and the slave? more intensely felt by the slave, when the government has been such as characterises the great mass of slave owners. . . These considerations, doubtless, induced our courts slowly . . to carve out a new exception in the case of slaves; . . [306] the complainant is entitled to the specific delivery of the slaves."

Pell v. Ball, 1 Rich. Eq. 361, March 1845. Harper, Ch.: [369] "decreed, . . that the negro slaves . . be . . sold . . in lots, according to families;"

Watson v. Boatwright, 1 Richardson 402, May 1845. "the parties considered Harriet to be affected with the consequences of the venerial disease, and . . valued her at $400, instead of $500, . . otherwise . . her price; . . turned out that she was laboring under an incurable disease of the heart, . . no value, . . had no venerial disease in any form."

Held: [404] "selling with notice of any defect, and for a less price . . shall not raise the implication of warranty . . as . . regards other defects . . which may have existed without the knowledge of either party."

Ordinary v. Spann, 1 Richardson 429, May 1845. [435] "Teague privately removed himself and all his personal property . . out of the limits of the State, except a slave . . who refused to go with him."

Carter v. [*Mrs.*] *Walker,* 2 Richardson 40, December 1845. [41] "the intestate . . [had] called on [Gosey] . . to cure [Dorcas] . . of a cancer in the foot." "administrators sold . . the negroes . . about the 1st January, 1843. . . When Dorcas was set up, . . [the auctioneer] said . . that she was sixty or seventy years old, and sound as far as he knew. . . sold, just before, an old woman represented as having rheumatism for more than one hundred dollars." "The defendant bid off . . Dorcas, for ninety-two or ninety-three dollars. . . [42] Mrs. Lucas [had] told Dorcas [before, in the kitchen,] 'put up your stick and go half bent, and if you don't bring much I'll buy you.' . . Defendant said 'don't you bid against me.' . . [43] Lipford . . in May or June after the sale . . went to Mrs. Walker to buy Dorcas as a nurse. . . offered one hundred dollars, . . refused; she said she did not think Dorcas would live with him. . . July . . Dorcas was carried to the Court House by the defendant, and exposed to public sale, but there was no bid; her leg was then swelled; . . [44] The jury found for the plaintiffs [administrators] about half the price the defendant had bid the negro off at." New trial refused.

Hendrix v. Trapp, 2 Richardson 93, December 1845. "while the slave was pursuing the highway to a neighbour's house, whither he had written leave to go from his master, the defendant met him, and struck him several severe blows over his head and arms with a hickory stick. A witness for the defendant testified that he heard the plaintiff admit that he had told the defendant, if he caught his negroes on his place to whip them, and that he, the plaintiff, was to do the same with the defendant's negroes. . . Verdict for the plaintiff for $200."

Parris v. Jenkins, 2 Richardson 106, December 1845. "A witness . . testified that, in the spring of 1841, when the wagon of the plaintiff was brought to the defendant's, . . [107] the driver, a negro of the plaintiff, told the defendant that his master had sent for Emily to help a little while about his crop, as he was backward."

Held: "This statement of the negro . . was admissible, as a part of the *res gestae,* explanatory of the defendant's act in sending Emily when she was sent for." Wardlaw, J.: "The words of a negro are at least as significant as the cry of a brute animal, . . and if any sound whatever, cotemporaneous with an act, . . might serve to give meaning to the act, it would be admissible,"

Norris v. Wait, 2 Richardson 148, December 1845. Trover for a negro woman, Caroline. "This slave, with five others, was claimed by the plaintiff ['a colored person'], under a parol gift from his [maternal] grandfather, . . in 1825, when he was an infant. The slaves were infants [too] . . and were taken into the possession of . . his father, . . [who] sold several [including Caroline] . . during his minority, . . [and] being indebted to insolvency, . . 1843, carried seventeen of his

[own] slaves to . . Georgia [[150] 'of whom fifteen were grown']. . . made a bill of sale of them to . . his brother-in-law, and [to plaintiff and another son, the consideration being debts amounting to $3,400 due them.] . . [149] They . . executed a power of attorney to . . Anderson, . . [who] got possession . . was advised by counsel [that the claim of the plaintiff under the bill of sale] was void by the law of Georgia, he being a colored person. Eight were sold . . part of the proceeds applied in satisfaction of . . attachment suits. The rest were brought back to South Carolina by the creditors and sold by the sheriff,"

Held: no implication that the plaintiff confirmed the sale of Caroline.

Mays v. Gillam, 2 Richardson 260, December 1845. "Bill Brown [an old negro] was a cake baker, and had a wife at defendant's. In January, 1835, he had, at the sale of . . [Abney's] estate . . been purchased by . . Broadway, at . . $355, . . May, 1835, a written agreement was made between the defendant and Broadway, . . that if the defendant should, at any time, pay . . $355, with interest . . the title of Bill should be vested in the defendant; with the express understanding . . that whenever . . Bill shall pay the . . $355, with interest . . and conform to the requisitions of the law, in such case . . provided, . . he is to become free. The defendant made payment . . 1837, a bill of sale by the defendant to . . Whitley [a neighbor], and a contemporaneous covenant by Whitley" [163 n.] "I promise to pay . . Gillam . . three hundred and fifty dollars, . . for . . Bill Brown; . . bind myself not to sell . . without the consent . . of . . Gillam. . . further . . agreed, that when . . Whitley, or Bill, shall pay [Gillam] . . three hundred and fifty dollars, with interest . . he shall be a free man, if he can give the necessary security, and pay . . in . . three years." [160] "Bill Brown never was in the actual possession of Whitley; but after . . as before, seems to have controlled his own time, being oftener at the defendant's, with his wife, sometimes laboring for wages, which he received from the persons who employed him, and sometimes going about in a cart to sell his cakes. Whitley was called his guardian, and occasionally gave him passes . . [161] In 1839, Bill made payments to the defendant on the covenant, as thereon endorsed, . . amounting to $379,09—leaving . . about 70 cents due at the date of the last payment . . July, 1839. After that . . Whitley repeatedly said that Bill had paid for himself, and that he, (Whitley,) had nothing more to do with him. . . referred persons who wished to hire Bill, to Bill himself. The defendant, . . in the latter part of 1839, gave passes to Bill; . . On 12th December, the defendant presented to Whitley the memorandum," [163 n.] "I . . set up no claim to . . Bill; . . he is to be considered the property of . . Gillam, until he is regularly liberated according to law." [161] "Whitley refused to sign it. Between that day and Christmas, . . Whitley died." His administrator brought an action of trover.

Nonsuit ordered: [162] "that so far as Whitley could make him so, Bill was free, . . in the condition of a slave emancipated contrary to law . . that Bill was therefore subject to seizure,[1] and whether seized by the

[1] Act of 1800.

defendant, or any body else, . . could not, without some act of seizure on his part, be recovered by the former owner." [Wardlaw, J.]

McKeithen v. Butler, 2 Rich. Eq. 37, December 1845. [38] "before the time for the redemption of the mortgage arrived [1840], . . defendant clandestinely removed the three mortgaged slaves from Alabama to . . this State,"

Blackman v. Gordon, 2 Rich. Eq. 43, December 1845. See Gordon *v.* Blackman, p. 392, *supra.* Petition for rehearing dismissed: [44] "the act of emancipation was to be in future, and the Act [of 1841] . . has intervened to forbid . . But is it said that an injury is done to the slaves . . that they had a vested right to freedom; and that the Act was retrospective, or *ex post facto,* with respect to them? . . the law declares them . . [45] chattels. They . . could not have come into court to enforce the execution of the trust. . . It is enough, that they were not actually manumitted, before the Act [of 1841] . . was passed." [Harper, Ch.]

Hall v. Timmons, 2 Rich. Eq. 120, December 1845. In 1818 Hall, of North Carolina, "executed a deed of gift of Friday, . . 'aged about one year,' to his grand-son, the complainant, . . The complainant and the negro were brought up together. When they were both about fifteen years of age, complainant accompanied the agent of his father to . . South Carolina, where the negro was sold."

Cregier v. Bunton, 2 Richardson 395, January 1846. Action for slander. [397] "the defendant told him that the plaintiff [overseer] had . . shot a beef [belonging to his employer], and sent some boys, (negro carpenters) to dress it; . . [398] it was negro news, but . . he stated it in such a way that he believed it. . . the jury . . found for the plaintiff"

Gist v. Toohey, 2 Richardson 424, January 1846. "1841, William, a slave of the plaintiff, who had earned one hundred dollars over and above his wages, placed that sum in the hands of the defendant, under an agreement that the defendant should purchase, for William, two of his children, for three hundred and fifty dollars; and that when William should repay to the defendant the balance . . with an additional sum of fifty dollars for each year that the balance should remain unpaid, he, the defendant, would execute a bill of sale to William, of the children. In pursuance of this agreement, the defendant bought the negroes for three hundred and fifty dollars."

Held: [425] "all the acquisitions of the slave are the property of the master. . . the $100 . . [426] belonged to the plaintiff; . . the defendant must refund"

McDaniel v. Emanuel, 2 Richardson 455, January 1846. "the shipping agent . . had employed Jack as one of the crew [on the Peedee River], by the trip; . . received peremptory instructions from the plaintiff [owner of Jack] to discharge . . Jack . . Jack . . was told . . asked leave . . to go as far as his master's place, . . carrying . . his box and luggage . . [456] Instead of stopping at the plaintiff's place,

Jack went on up the river, acting as one of the crew, by the consent of the captain. At Mar's Bluff, the boat touched at the landing, and . . one of the hands made his escape without the knowledge of the captain. After going some distance up the river, the captain ordered the boat to return, and in the manoeuvre to do so, Jack was knocked overboard and drowned—he and the captain both being much excited by spirits at the time."

Held: the owners of the boat are liable.

Boinest v. Leignez, 2 Richardson 464, January 1846. [465] "when the negroes [Pembroke, Judy, and their five children] were put up, . . [the auctioneer] was directed to warrant nothing but the title; that Pembroke said that he had a rheumatism . . that Judy [[468] 'about 40 years of age'] was a first rate cook, but had a sore leg; . . [466] had on stockings;" "the boys constituted the great value of the lot;" [465] "Leignez was the purchaser at $370 each, . . [468] Dr. . . Geddings . . examined Judy shortly after . . leg . . ulcerated; . . Pembroke . . had a tumor in one of his arms;" They were tendered back, ten days after the sale, and [466] "were re-sold [by the plaintiff] at $325 apiece;" [465] "at auction on defendant's account, at a loss of $402,42 [including charges for feeding and expenses]." Verdict for the plaintiff for that amount. New trial refused.

Guerry v. Kerton, 2 Richardson 507, January 1846. A short time before the death of his wife (the life tenant), White sold Elsey's child, eight years old, to Dickenson, partner of Kerton, [508] "engaged in merchandize, and in buying and selling negroes." [507] "Within a few days after Mrs. White's death, Elsey and her remaining children ['a girl about twelve . . a boy, two years younger; . . [and] the youngest about a year old'] were carried to Georgetown, and sold to Dickenson for $800. . . [Witness] warned Dickenson that the property had been entailed . . White offered to sell the oldest to him for three hundred dollars. . . [509] Dickenson . . sent them . . to Charleston, and from thence to New Orleans [before the pursuing remainderman arrived];" [512] "The highest price set on the negroes was $1375." Verdict for the plaintiff for $1850. [512] "The interest is $104, making . . $1479."

Held: "There must . . be a new trial, unless the plaintiffs release all . . above that sum."

Pinckney v. Pinckney, 2 Rich. Eq. 218, January 1846. The will of Thomas Pinckney, dated 1842, contained [224] "a list of the negroes on the Fairfield plantation, one hundred and twenty . . and of those on Moreland, . . seventy-three . . 'I . . give . . to my wife . . all such of the negro slaves . . belonging to Moreland plantation, as were not named in the marriage settlement[1] . . In consideration of the great loss sustained by the said plantation in the year of the Cholera, her list is now made up to her. Provided, nevertheless, that should there be a few people named originally in her settlement, and not now named in the foregoing list, or by their forming connexions with the Fairfield people; such shall remain of the Fairfield list and considered as being exchanged.'"

[1] *Ibid.* 219, 220.

State v. Harden, 2 Richardson 533, May 1846. [534] "indictment for the murder of a slave. . . found guilty,"

Morgan v. Livingston, 2 Richardson 573, May 1846. [576] "The defendant, many years ago, overseed for Col. Brooks. One of his beef cattle was killed . . near to Morgan's residence. . . An examination of Col. Brooks' negroes was concluded on, . . Mott . . denied all knowledge . . but referred them to Willis. He . . said he carried some of the beef to Esq. Martin's where he had a wife, and some to Col. Brooks' residence. . . the plaintiff . . said, 'I expect . . a part . . came to my house. I was from home, . . my wife, on my return, told me that in the night a negro hailed after she had gone to bed, and asked if she did not wish to buy some beef. She refused, and told him to be off, . . The next morning . . [577] she found some beef had been left at the door, in a basket, and fearing that something wrong was intended, she made her little boy take it and throw it away.'" [575] "Col. David Denny proved, that as the guardian of a free negro, named Wade Dennis, he sued the defendant before Esq. Giles Martin, for some wheat sold to him, the defendant, by the free negro. . . [578] Esq. Martin . . proved that Dennis, the free negro, for whom the recovery was had, told him the judgment was far too much, and left with him $1, to be refunded to the defendant. . . [said] in truth the defendant did owe him $6, but . . disputed a dollar of it. That he, the negro, was in a difficulty, (being charged with some crime,) and he would give it up."

Duncan v. Railroad Co., 2 Richardson 613, May 1846. "the defendants . . [614] hired . . three slaves, . . 1844, . . 'shall not be employed on the cars or locomotives . . Company . . at liberty . . to carry said slaves . . to . . place . . where their services may be required,' . . Wesley, in defiance of orders . . stayed at Hamburg. The next morning . . found in the baggage car . . [615] 'going to my work.' . . whilst the locomotive was going . . the boy jumped off; . . crushed" Held: the defendants are liable.

Jones v. Harris, 3 Richardson 14, May 1846. [17] "he had given his negroes off in families, and did not wish to separate them."

Carson v. Law, 2 Rich. Eq. 296, May 1846. [304] "when the nine negroes were put up, Robinson said he would give 1000 dollars, and send them back to Mrs. L. . . they were knocked down very quick, not over half a minute, he thinks, . . [305] The deputy . . cried $1000 once, $1000 twice, $1000 three times, and knocked down. Never knew as many put up together. If they had been put up separately, would have sold better; . . worth 2500 dollars."

White v. Tax Collector, 3 Richardson 136, August 1846. Report of Judge O'Neall: "They claim to be white people, and not liable to the capitation tax . . The grandmother . . was a . . much respected mulatto woman . . In an old record . . alleged that her mother was . . white . . Their grandfather was . . a revolutionary soldier. Their father, Elijah Bass, . . was a dark quadroon, if he was one; from his color he appeared to be a mulatto. . . Mrs. White [his daughter] shewed

plainly the corrupt blood. Her brother . . appeared an ordinary white sand hill boy. . . Her child, at the breast, was a fair, blue-eyed white child; no one, (not knowing its mother,) would say it had any admixture of African blood. . . [137] [Elijah Bass] was never admitted to any of the privileges of a white man. . . was never . . subjected to a capitation tax, . . a very intelligent jury . . found the relatrix and relators to be free mulattoes. A jury on the other side of the house, found the grand children of Elijah Bass (children of one of his sons by a white woman) to be free white people. I wish the court may be able to find some ground to give a new trial. For if any people tinged with African blood are worthy to be rated as white, the relatrix and relators present the very best claim" Grounds for a new trial: "although not proved . . that Elijah Bass had been admitted to all of the rights . . of a free white man, yet the affidavits of respectable persons were given . . that 'Elijah Bass is not a clear-blooded white man; but has always been treated by his neighbors as a free white man. He visits and is visited by them as a free white man, eats with them at their tables, and they with him at his, and is honest and industrious, . . He . . has been residing for upwards of fifty years in this district; and during all that time . . has never paid this capitation tax or been required to have a guardian, . . [138] He owns lands and slaves, and has raised and educated his children . . in a respectable manner . . his wife . . is a free white woman of good character, . . [Their children] were educated as free white persons at school with the other white children of the neighborhood, and are treated in society as free white persons; . . [Their daughter] has married . . Mr. Thomas White [a Scotchman], who is well educated and teaches a respectable school in the neighborhood of his father-in-law, and she is highly respected, and . . enjoys all the . . privileges of a free white woman, and is treated as such by all her neighbors,'"

New trial refused: [139] "The constant tendency of this class to assimilate to the white, and the desire of elevation, present frequent cases of embarrassment and difficulty. . . It would be difficult, if not impolitic, to define by . . inflexible rules the line of separation . . the question of the reception of colored persons into the class of citizens, must partake more of a political than a legal character, and, in a great degree, be decided by public opinion, expressed in the verdict of a jury. . . [141] the child of Mary White is not concluded by this record." [Frost, J.] "Evans and Wardlaw, JJ., concurred. Richardson and O'Neall, JJ. We dissent, and think that a new trial should have been granted. Butler, J. absent."

D'Oyley v. Loveland, 1 Strobhart 45, November 1846. "There was a clause in the deed of settlement, providing for the sale of any of the negroes for misbehaviour, or whenever it should be for the benefit of the *cestui que trusts*,"

Rice v. Gist, 1 Strobhart 82, November 1846. [83] "It was not proved whether the plaintiff bet another negro against Bill, or only the value of Bill."

State v. Edge, 1 Strobhart 91, November 1846. "Litchfield and his brother had got possession of a negro claimed by Edge. They were carrying him off, under some supposed claim of their mother. Edge, having heard of this intention, called several friends . . some carried guns." They stopped Litchfield's "horse and chair on the road, in order to get . . negro then in the chair with Litchfield. . . holding the bridle of the horse, and using threats, regaining the negro."

Gage v. McIlwain, 1 Strobhart 135, November 1846. "Rogers . . carried on the blacksmith's business, by his slave, who had entire charge of the workshop. That this man entered on a slate . . all the work . . done, . . a notice was affixed to the door of the workshop . . that all persons who had work done there on credit, should be allowed to do so, on condition that they consented to be charged according to the memorandum made by the negro."

Bullock v. Griffin, 1 Strob. Eq. 60, November 1846. In 1828 [62] "Bullock and his wife removed to the West [Mississippi]—they took Silvia and Chima with them"

Snoddy v. Snoddy, 1 Strob. Eq. 84, November 1846. [85] "she had given Jude and her children to . . her son Alexander, . . On one occasion she said to . . Cox, that he ought to congratulate Alexander on the birth of one of Jude's children."

Dr. Guerard v. Dr. Jenkins, 1 Strobhart 171, January 1847. "a summary process to recover fifty dollars for a surgical operation. The defendant, being the plantation physician of Mrs. Eustis, and finding it necessary that a surgical operation should be performed on one of her negroes, requested the overseer to send for the plaintiff. He . . performed the operation . . His Honor . . decreed for the plaintiff;" New trial granted.

Chisolm v. Gadsden, 1 Strobhart 220, January 1847. [221] "Previous to the conclusion of the bargain, defendant was warned that the negroes were not, as they were alleged to be, North Carolina negroes, but had been brought from the vicinity of Georgetown, and were encumbered with judgments."

State v. Bierman and Jacken, 1 Strobhart 256, January 1847. "indictment under the Act of 1834, for selling . . liquor to a slave. . . marshal, with an officer, to arrest . . Saw Jacken pour out liquor (whiskey) into a jug, for a negro boy; . . he [the boy] escaped."

Roux v. Chaplin, 1 Strob. Eq. 129, January 1847. [133] "1843, . . a widow . . owning several plantations and several hundred negroes,"

State v. Kirby, 1 Strobhart 378, May 1847. "The prisoner was tried for the murder . . several counts, one charging him . . as having . . incited . . Dave, the slave of the deceased, to commit the crime. . . [379] Dave had been . . convicted . . [380] had made a confession implicating [Kirby] . . [383] the prisoner observed . . 'Lord God, Dave, what a lie you've told—recollect you've got to die.' Dave said,

'Yes, I know that—you are white men and I'm a negro, but I have told the truth.'" [381] "Col. Thomson said, 'Kirby, the dying confession of that negro will make every body believe you are guilty, unless you can make a better showing.'" He confessed later, and was convicted.

Whatley v. Murrell, 1 Strobhart 389, May 1847. [392] "Murrell then said he would bet witness two negroes to one he could whip Gomilion."

State v. Anderson, 1 Strobhart 455, May 1847. "1845, after 10 o'clock at night, they gave . . Solomon . . an empty bottle, their names . . at the bottom, secured by tallow: . . gave the boy 25 cents: . . [456] the boy came out with the bottle filled with whiskey, . . [457] searched his pockets for the 25 cts., and did not find it." "boy . . frequently left his tools in Anderson's shop. . . engaged on a roof of a barn"

Morse v. Garner, 1 Strobhart 514, May 1847. Garner's ferryman [516] "had directed the negro at the ferry, to require the plaintiff to pay ferriage."

Harrison v. Berkley, 1 Strobhart 525, May 1847. Action of trespass on the case. On December 25, 1845, "Bob, being patroon of one of the plaintiff's boats, . . applied to the defendant for liquor, but the defendant refused to let him have it. Eli Bass, a free negro, (who was chief patroon of the fleet to which Bob's boat belonged,) then took the jug and handed it to the defendant, who filled it and handed it back to Bass, who delivered it to Bob," Besides the gallon jug, he received a quart bottle of whiskey from which he drank repeatedly. He [526] "fell into a creek, in which he would have been drowned, but for the aid of some white men then in his company;" and next morning he was found dead near a house where he had "called . . and got fire, . . [528] The jury found for the plaintiff six hundred and fifty dollars;"

Held: [551] "the verdict is free from the objection, that the damages were too remote."

Bryan v. Robert, 1 Strob. Eq. 334, May 1847. Stephen was bought, in 1842, for $625, by Myers, [336] "a hog-driver from the western country; . . had a wife on . . [Robert's] plantation, and was unwilling to go with Myers [to Kentucky]. Myers exchanged Stephen with Robert for two negroes,"

Simpson v. Vaughan, 2 Strobhart 32, November 1847. [34] "Vaughan is among our wealthiest men. I once heard him say that he had twenty-five negro children too small to work."

Ex parte Boylston, 2 Strobhart 41, November 1847. "Jim had been arrested . . the offence alleged . . insolent language and behavior towards Mrs. Crook," Judge Wardlaw dismissed a motion for a prohibition. [42] "The relator moved the Court of Appeals to reverse"

Motion dismissed: [43] "a slave can invoke neither *magna charta* nor common law. . . In the very nature of things, he is subject to despotism. . . [44] trials of slaves for insolence have been, since 1796 (as without doubt they were before) frequent and unquestioned:" [Ward-

law, J.] Judge O'Neall dissented: [46] "the Legislature have not thought proper to declare it to be a crime. . . Some of the most faithful and devoted slaves have been remarkable for their liberty of speech. . . and who has ever dreamed that an open-mouthed, saucy negro, is the deep intriguer calculated to raise . . [47] an insurrection? . . It is . . said, that it is the practice of the whole State to try slaves for insolence before a magistrate and free-holders. . . I have been tolerably familiar with the administration of justice . . for last 33 years, and this is the first case which I have ever met with. . . another objection . . A free negro must be just as liable . . yet this Court, in the State *v.* Fisher, MS. Session cases 121, with the assent of every member . . (except myself), declared that insolence, on the part of a free negro, would not justify a white man in striking! . . no jurisdiction ever did exist, which is liable to more abuse than that exercised by Magistrates over slaves. Clothe them with the power to try slaves for insolence, and the result will be that passion, prejudice and ignorance will crowd abuses on this inferior jurisdiction to an extent not to be tolerated by slave owners."

State v. Smith, 2 Strobhart 77, November 1847. The prisoner fired a shot at Carter, "a free white of dark complexion," who had spoken contemptuously of a [78] "drunken crowd." "Then a plaintive voice was heard, saying that somebody was shot: and it appeared that two little negro boys, Monday and his brother, . . meeting the noisy crowd, had turned aside and sat on the fence . . The ball from the pistol had passed through Monday's brain," The prisoner said [79] "that he wished it had been Carter and not the negro: that he would rather be hung than 'take the abuse of that d—d mulatto,' meaning Carter. . . found guilty of murder," New trial refused.

Vinyard v. Passalaigue, 2 Strobhart 536, November 1847–May 1848. Action of trover. "will of Mrs. E. Peake, . . August, 1822: . . bequeathed Dido, (the mother of Mary Anne,) and her children to the plaintiff, . . 'they by no means to be considered in slavery.' From the death of the testatrix to Dec. 1842, . . Mary Anne was allowed to go at large, and do as she pleased. . . She was married to Passalaigue's baker. . . [537] In Dec. 1842, the plaintiff, Seyle, Perry and Vinyard's negro driver, entered the house where Mary Anne and her children and her husband lived, and carried her and her children to Vinyard's plantation, where they remained a few days and then escaped. They were demanded from the defendant, . . claiming them . . by possession. . . The woman Mary Anne, had often shown to the leader of the patrol, on Charleston Neck, a pass. Both parties, the plaintiff and defendant, declared in Court that their whole object was that the woman and her children should be free. . . The jury were instructed [by Judge O'Neall] . . If . . the negroes had been permitted to go at large . . 20 years, the jury might presume that they were legally manumitted . . [538] returned . . with a verdict, 'We find for the defendant, believing the negroes to be free.'"

New trial ordered: [546] "we cannot presume a Legislative Act of emancipation." [543] "The law discourages and forbids emancipation; . . [545] the long experience of very many of these United States—

all of which, at least all that were once British Colonies, held . . African slaves . . is, that the white Caucasian and the black African races cannot live together upon terms of equality. . . whether on the English settlements on the coasts of Africa, or as coolies in Jamaica, or as apprentices in Illinois, or as emancipated in New York or Philadelphia, Africans become, . . as fully as in Charleston . . the . . servants of white men." [Richardson, J.] Judge O'Neall dissented: [547] "In 1822, such an Act passed for one of the faithful and devoted servants, who revealed the contemplated insurrection of that year; and I hope the Legislature of 48-49 will adorn their statute book, by an enactment in favor of the slave who stood by his master in the bloody issues of the late Mexican campaign. Indeed, I hope, I may be allowed to say, that after 27 years' experience, under the Act of 1820, I think its policy so questionable, that it ought to be repealed. A law evaded, as it is, and against which public sentiment, within and without the State, is so much arrayed, ought not to stand. . . by repealing all such enactments, . . we should have nothing to fear from anything which our meddling friends, in other States, may think proper to say or do against slavery."

Davis v. Dr. Whitridge, 2 Strobhart 232, January 1848. "action of trespass for assault and battery. . . [233] The plaintiff had been . . 1844, . . overseer [of defendant], . . to receive 6 per cent. on the cotton to be raised from 150 acres . . The defendant, . . January, 1845, employed [another] . . The plaintiff . . would not give the keys . . that he had not had a settlement for the crop of the last year, . . the defendant came . . had to borrow corn from . . his own negroes to feed his horses. Both plaintiff and defendant were . . peaceable, prudent men . . about sunrise, . . five or six of the defendant's slaves, by his directions, and in his presence, seized and tied the plaintiff's hands, with a strong, small cord. . . the defendant ordered his negroes to search his pockets, which was done, and one key taken out. . . the plaintiff called the defendant a d—d yankee, . . [234] he and his wife were . . rowed across . . river, . . untied, . . [235] The jury found for the plaintiff $2,500 damages."

New trial refused: [242] "To employ slaves in binding with cords the person of a freeman, who but the day before were bound to obey him, was calculated to degrade him . . The defendant . . does not seem to have understood that relation which exists in popular sentiment between the white man and the negro, the freeman and the slave, which no man can violate with impunity." [Evans, J.]

Parker v. Pringle, 2 Strobhart 242, January 1848. [246] "at first . . the mill worked well—rice well threshed. The negroes worked extra work, morning and evening—one hour to one and a quarter, in the morning. The mill hands not sufficient—field hands assisted to remove the straw."

Alston v. Durant, 2 Strobhart 257, January 1848. A runaway slave was taken and lodged in Georgetown jail in August, 1845. [258] "He escaped, with a white prisoner, in January following . . by cutting a

hole through the roof. Neither the slave nor prisoner was confined in any room. They had the range of the Jail, and were not locked up at night." The sheriff [257] "advertised the escape, and offered a reward for the retaking of the slave—who was taken" He required the plaintiff to pay all expenses connected with the escape before delivering his slave to him. Held: not a voluntary payment.

State v. Chandler, 2 Strobhart 266, January 1848. "overseer of Mrs. Prioleau, having charge of the slaves Prince, Frank, and William, in February, 1846, . . exchanged with them whiskey for their weekly allowance of corn." [1]

Held: an overseer has no legal right to trade with the slaves under him without a written permit from the owner. Judge Wardlaw dissented: [269] "If he had sold them arsenic . . or abolition pamphlets, he would have done worse . . but he would not . . have come any more within the statute against trading with slaves than I think he now does."

Tuttle v. Rembert, 2 Strobhart 270, January 1848. "By indenture, dated 5th September, 1835, the defendant bound to Susan Hawkins [a milliner, now Mrs. Tuttle,] his slave Lydia, then two or three years old, as an apprentice, for the term of [ ] years. Susan Hawkins covenanted to feed and clothe the girl, and to teach her to sew. . . Lydia went into the possession of Susan Hawkins, and continued until July, 1845, when she ran away, and was discovered by plaintiffs in the possession of Mrs. Abrams. . . defendant . . said he . . had sold, or was going to sell her to Abrams," Nonsuit refused.

State v. Nicholas (*slave of William Kelly*), 2 Strobhart 278, January 1848. Nicholas was found [283] "guilty of grievously wounding a white person, under A. A. 1740, and sentenced to be hung." [280] "the wounds, proved to have been inflicted, were but superficial or flesh wounds, . . Magistrates are respectfully informed . . that a new trial will be urged, on the ground—That the presiding Magistrates and Freeholders, or some of them, were unaware of the 18th section of the Act of 1751, authorizing the Court, or a majority of them, to mitigate the punishment . . [281] in capital cases against slaves, to something short of death;"

New trial granted: [288] "The 18th section . . was omitted by Judge Grimke (P. L. 217). . . but the 18th section was virtually revived, by a revival Act of 1783. . . hidden from public view until the publication of the statutes at large; . . [290] the 18th section . . is of force," [Wardlaw, J.]

Gadsden v. Gasque, 2 Strobhart 324, January 1848. Letter of a slave broker in Charleston, May 1845: [326] "negroes are getting higher every day, particularly men and boys; not so small as the one you have sent—two sizes larger." Letter of same, August 1845: "you can make good profit if you buy judiciously. I do not know what effect the Mexican War will have on slave property—as soon as I can find out what public sentiment is, I will write" Letter of September 17, 1845: [327] "I sold

[1] "A peck of corn . . just a negro's allowance" Davis *v.* Whitridge, *ibid.* 236.

your man . . this day, for five hundred and eighty-five dollars; I also sold Joe, but he was returned as unsound, as per . . certificate:[1] what shall I do? Shall I sell him at a less price . . I got, in the sale just broken up, $563. I have been offered $462½ for the girl; I am trying for $500; . . You paid too much for the little boy; he is not likely; I fear you have paid also too much for the old man: . . Send me on prime negroes, and I can do well for you. . . You can give $525 for men; they will bring $575 to $600; women, $400, will sell for $475."

Rantin v. Robertson, 2 Strobhart 366, January 1848. Two slaves were put as apprentices to a house carpenter for terms of seven and eight years, the carpenter to provide them with [368] "sufficient meat, drink, working clothes, lodging and washing, fitting for an apprentice, during the said term"

Villard v. Robert, 2 Strob. Eq. 40, January 1848. [41] "In 1826, . . Nancy had no issue. . . between that time and 1845, she had borne seventeen children, of whom six were alive"

Dougherty v. Dougherty, 2 Strob. Eq. 63, January 1848. Will of John Dougherty, 1844: [64] "I leave old Tenah, her daughter Clarissa, and her [five] children . . to be left free under the guardianship of my executors, and as they wont be able to support themselves, to have a reasonable support from the estate. I give to my niece . . young Tenah, and her son . . Flora and her sister, during . . life, and at her death, they are to be left free, under the guardianship of my executors;"

Held: [67] "The bequest of freedom . . is void, by the provisions of the Act of 1841."

Pye v. [*Dr.*] *Carr*, 2 Strob. Eq. 105, January 1848. [108] "1825, when she was . . [109] about eight months old, . . Sue ['between thirty and thirty-five'] was given to her [by her grandmother]." [107] "Her child Molly, was born . . 1826; Sam, . . 1828, or . . 1829; in 1831 . . another child, that died in the month; . . Phillis was born about . . 1833; Leah . . 1837;" Sue died in 1838. "Molly, had a child . . 1844. . . Sue, and her children, as they grew up, were employed generally about the farm [of defendant, father of complainant.] . . it is the custom, in the defendant's neighborhood, of persons who have the management of estates consisting of negroes only, to hire them out (near to defendant's residence) . . to the highest bidder; or, if no offer be made . . then, to him who will maintain them at the lowest rate—the owners paying taxes and doctor's bills." The commissioner charged "For Sue's wages, 11 years at $54, . . From which take . . food for small negroes, . . $360 75; clothing of [same] . . $74 00 . . [108] The complainants excepted . . Because the Commissioner has charged for the expense of feeding and clothing . . Sam and Phillis, until . . ten years of age, and . . refused to allow the complainants any thing for their hire, until the one was 12, and the other 13 . . Because . . $9 75 per annum allowed . . for feeding the young negroes, is extravagant"

[1] Copy of Dr. Lee's certificate: [326] "Joe has a curvature of the spine and small limbs, . . probably the consequence of this first defect—I do not consider him capable of enduring continued hard work."

Held: [110] "his stewardship was faithfully and fully discharged, when he delivered over the five negroes, after the marriage of his daughter." "it is the habit in St. George's to treat with much indulgence a woman like Sue, giving birth to a child every two years. . . witness . . said, that for a woman having five children, he had, in a succession of 5 or 6 years, paid from $18 to $40 per annum, besides their services, for their rearing, etc.; that he paid doctor's bills and taxes, and furnished blankets every two years. Dr. . . Murray said he had paid thirty-six dollars per year for the support of a negro woman and three children, and this at public outcry to the lowest bidder;" [Dunkin, Ch.]

State v. Fleming, 2 Strobhart 464, May 1848. "The prisoner was indicted for the murder of . . his own slave. . . On the trial, there was no reasonable ground to convict the prisoner of murder, and the question was whether he could be convicted for the second offence, mentioned in the Act of 1821, for killing in sudden heat and passion. . . The jury were . . directed that . . [manslaughter] should be their verdict, . . [so] found"

Motion in arrest of judgment, dismissed: [470] "If the infliction of punishment be . . under the influence of passion excited by the misconduct of the slave, it would be that description of manslaughter described in the Act by . . 'sudden heat and passion,' as was the fact in this case. I come . . to the conclusion that the legislature intentionally omitted . . 'undue correction,' as useless, and intended to include every punishable homicide of a slave under the two classes enumerated . . when applied to the killing of a slave, . . [manslaughter] can only mean a killing in sudden heat and passion." [Evans, J.]

Richardson v. Broughton, 3 Strobhart 1, May 1848. The defendant came into the plaintiff's plantation [2] "and took from pens, near the negro houses, five hogs and hauled them away in the wagon. . . [He said] 'it is negro property and I intend to take it away.' . . taken to the magistrate's,"

Held: the act of 1740 does not confer the right to enter the enclosure of the owner of the slave for the purpose of seizing negro property. History of S. C. legislation as to such property. *Ibid.* 6-10.

Floyd v. Floyd, 3 Strobhart 44, May 1848. The testator said that [47] "he (Charles) was mean enough to negroes, but that Chandler and his wife were ten times meaner—that he knew of them kicking little negroes out of the door, which was high from the ground—that he had also known of Chandler setting his dogs on little children, who could not get out of the way, tearing their clothes off them, and their skin."

Boone v. Lyde, 3 Strobhart 77, May 1848. "There was a written contract, by which it was stipulated that Boone [the overseer] was to govern the negroes by Lyde's direction, and with humanity and kindness. . . it appeared from Boone's confession, that he was about to flog one of the negro men; the negro ran, and he snapt his gun at him, and said if he had fired, he would never have run again. The negro was roguish, but not insubordinate."

Stephens v. Chappell, 3 Strobhart 80, May 1848. Clarissa was sold on August 18, warranted sound. [81] "she continued well, until Saturday evening, . . picking out cotton. . . on Sunday [August 24] she was very sick; . . Dr. Peterson of the Thomsonian school was called in: he treated her for a day or two; on the 27th Dr. Gilder . . was called in; . . attended to her" every day but two, till the day of her death, September 5. "the disease was typhoid fever."

McLauchlin v. Lomas, 3 Strobhart 85, May 1848. John Howell, a negro man worth $1500, was hired to defendants, house carpenters, with three other negroes (all carpenters) belonging to plaintiff. "There were a great many workmen in the shop, some belonging to defendants, and some apprentices. Every carpenter got out his own stuff." Three of John's fingers were cut off while he was sawing laths at the circular saw, and he died of lockjaw.

Held: when the hiring is general, the hirer may employ the negro in any way he chooses, [87] "consistently with his obligation not to employ him in any dangerous work, such as a prudent man would not employ his own negro in."

State v. Scates, 3 Strobhart 106, May 1848. Three men "marked a piece of pork, got a patrol warrant and went to the defendant's at 10 o'clock at night; they gave the piece of pork to Dick to put in Scates' barrel, side of the smoke house. . . In the morning . . defendant . . looked into the barrel, . . and took the meat into his smoke house. They then got a search warrant . . found . . the very piece of meat,"

Brooks v. Penn, 2 Strob. Eq. 113, May 1848. [114] "a negro woman, Elsey, who had, for the preceding 6 or 7 years, been hired, and employed occasionally as a house servant, but principally as a wet nurse for the children of Blocker, [126] Her skill and fidelity were proved to be such that the house and the children were left to her care, in Mrs. Blocker's occasional absences;"

Johnson v. Lewis, 2 Strob. Eq. 157, May 1848. [163] "a gang of negroes, in which there were about sixteen workers, and among them a blacksmith, two carpenters, and two boat hands."

Finley v. Hunter, 2 Strob. Eq. 208, May 1848. Thomas Finley, by his will, dated 1823, bequeathed slaves to his son, after the death of his wife, [209] "on the following condition, viz: that he emancipate all the female children of my two negro women, Nancy and Jinny, or cause them to be sent to . . Indiana or Ohio, where the laws of the State will liberate them. The said female children are to be set free as they respectively arrive at the age of 25 years, and all their children with them, should they have any; as it is my wish and desire to put a stop to the slavery of the race of negroes belonging to me in future." He bequeathed to his niece a negro boy "absolutely, but to be well treated and not sold or bartered out of her family;" The testator died in 1831, and his widow in 1845. Held: the act of 1841 rendered void the condition of the bequest to his son.

Fraser v. McClenaghan, 2 Strob. Eq. 227, May 1848. Held: when a bill is properly filed for the specific delivery of slaves, and the plaintiff establishes his right of property, the court will decree compensation for such of the slaves as may have died pending the suit.

State v. Maberry, 3 Strobhart 144, November 1848. "One . . had been arrested, on a charge of selling spirits to slaves from a wagon,"

State v. Thomas, 3 Strobhart 269, November 1848. "indicted for harboring a runaway slave,[1] . . purchased by . . Kaigler . . November, or . . December, 1846. Mr. Kaigler had him in possession about three weeks; he [the slave] left his wagon in Columbia; . . [The defendants] were on their way up the [Broad] river, [January 28, 1847,] when . . about sun down, a negro hailed the boat, and asked 'dont you want to hire a hand?' The witness . . said 'he is some runaway, let us go on.' The defendant Jas. V. [Thomas], said, 'come to the Flaming Sword Landing,' then a mile above, 'and bring your master with you, and I'll hire or buy.' . . after night . . the negro came with a white man, or boy, . . who said he was the negro's master. The defendant, James V., and he traded. James V. was to keep the negro on hire, $45—till Christmas—or if he and the negro liked one another, he was to pay $525, and keep the negro. . . He said the note for the hire, or for the price of the negro, was to be left with Lakin's Tom, a negro slave, having charge of Mr. Lakin's Mill on Broad river. . . [270] He passed up in the boat, to the residence of the defendants, . . and there remained until . . [about the] first of June 1847, when . . [he was] arrested as a runaway and carried . . to Chester jail. . . The negro was kept publicly; worked openly, on the plantation; went to log-rollings and worked on the road." All the defendants were convicted. New trial refused.

McElhenny v. Wylie, 3 Strobhart 284, November 1848. The deputy and the two Wylies "examined the negro houses and kitchen—the negroes were not found. . . [then] went into the dwelling, where the plaintiff, his wife and daughter were in bed, and William, the defendant, pushed aside the plank on the loft, went up, found the negroes, seized and handed them down to the deputy, who *then* levied upon them. . . [287] the next day after this affair, he and his brother came back and demanded the negroes's clothes—they were refused; he and his brother, then, went into the negro house, . . tore down a dresser, and took away the negroes's [*sic*] clothes."

Footman v. Pendergrass, 2 Strob. Eq. 317, November 1848. [319] "Three of the negroes, Matilda, Rose and Betsy, have run away from him, and, as he has heard and believes, are in the possession of . . Footman and wife."

Moon v. Moon, 2 Strob. Eq. 327, November 1848. [328] "the slave Harriet is a breeding woman, of the age of twenty-three years; Henry is about five years old, John is about three years old, and Hannah about nine months old;" They were sent to Mississippi by Mrs. Moon, the

[1] Act of 1821.

life tenant, and [331] "she was arrested by a writ of *ne exeat*, to prevent her from doing what already had been done: sending the property out of the State." She had been confined in jail three months when this case was heard. Her answer to the bill states that [329] "the girl becoming a breeding woman, has been ever since an actual incumbrance and expense, and not a benefit to her; she was, from a child, of a delicate constitution, and has required great care and nursing from the defendant; . . [330] and she [Mrs. Moon] cannot be persuaded that any just code of morals or principles of equity can require of the defendant, at her time of life, to become the nurse of little negroes, and a servant of servants, for the plaintiffs and their posterity;"

Decreed: [333] "that the . . slaves, with their increase, be delivered up to the remainder-men at the expiration of the defendant's life estate; and that the defendant . . give bond"

Lloyd v. Barden, 3 Strobhart 343, January 1849. [345] "Tom was on the deck, he is the pilot, a black man;"

Rowand v. Bellinger, 3 Strobhart 373, January 1849. Letter, 1847, to owner of the slave Nelly: [374] "We inform you that a negro girl, calling herself Nelly, who has been recently in your possession, is in our custody. She represents herself as having left your premises this morning. She is in a place of safe keeping, without the means of communication with other negroes, and is comfortably provided for. We intend that you shall not again have possession of Nelly, but do not propose to impair any other rights which you may be able to establish in respect to her as a slave. In any communication you may desire to have with us upon this subject, we refer you to C. B. Northrop Esq., who will represent us. Respectfully yours, etc.

(signed) John Bellinger, M. D.
G. W. Cooper,
W. C. Gatewood,
C. B. Northrop."

The negro was not heard of again in the neighborhood.

Smith v. Hilliard, 3 Strob. Eq. 211, January 1849. Will, dated 1845: [213] "I . . bequeath . . four carpenters,"

Satterwhite v. Kennedy, 3 Strobhart 457, May 1849. Action of trespass *de bonis asportatis*. Kennedy, administrator of the mortgagee, "having heard a rumor . . that the plaintiff [mortgagor] was going to carry off the negroes, went with a constable one Saturday night, . . to the negro quarters of the plaintiff, and took away the mortgaged negroes. Kennedy had a gun—they made no noise" Nonsuit ordered.

Williams v. Prince, 3 Strobhart 490, May 1849. [491] "Prince said he had been giving the strap to her nurse, and his wife had interposed and he had given her some;"

State v. Brown, 3 Strobhart 508, May 1849. "the prisoner was indicted for stealing three slaves, . . and for aiding them to run away. . . A month or five weeks previous [to the disappearance of Isaac and Hagar,

'a house servant'], Verg had run away from [Truesdale] . . Isaac and Hagar disappeared at night. Hagar's children, one two years old, the other a sucking child, were gone at night: but in the morning were found in the mother's house. The owner lost at the time of their flight $3000 in money, part paper, part silver. . . [The slaves] [509] were found in the neighborhood of Jefferson, Tazewell county, Virginia, in the possession of *Big Mouth* James Brown. . . He and the negroes were under assumed names . . Brown . . as a witness for the State, . . testified that a week or two before . . the prisoner . . told him, that he had a notion to get Truesdale's negroes to get into his pile of money, bring it to him, and then he would take them, the negroes, to a free State. . . On the Sunday night that the negroes left their master, the prisoner . . came to the witness' house. . . wanted him to go with the negroes. . . The next day, . . prisoner gave him . . over $300, (50 of it to bear expenses) to go with the negroes to a free State. . . [510] the prisoner . . was to give Tom [witness's brother] $200 for writing a free pass. . . told him to tell any one who might follow, that the negroes were free, and had hired him to carry them off. He advised him to arm himself, and if any body followed, to kill the pursuer and the negroes, and throw their bodies in the river, like Murrell.[1] . . [511] The negroes . . were taken three miles from the village [Jefferson], on the road leading to Kentucky and the Ohio river, distant 160 miles." The prisoner was convicted. Motions in arrest of judgment, and for new trial, dismissed.

McKenzie v. Allen, 3 Strobhart 546, May 1849. "Two of the defendant's servants had been taken up . . for riotous behaviour on Sunday, and, with others, were about to be flogged at the market place, Monday morning, when the defendant came up—asked what they were whipped for; and said they should not be whipped; that he would whip the marshall [*sic*]. . . The defendant jirked [*sic*] the boy from the marshall, who raised his fist or his whip. The defendant then looked at the ordinance, and declared himself satisfied."

State v. Bowen, 3 Strobhart 573, May 1849. "prosecutions . . for denying, neglecting and refusing to allow . . sufficient food and clothing,[2] . . [574] The evidence shews the common opinion to be, that animal food is necessary, and the custom to supply it in the section of the State in which the defendant resided. . . The defendant did not give his negroes enough even of meal, the only provision he did give. . . Jackson, the defendant's overseer, [testified] that . . [575] The grown negroes had only a quart of meal a day. Many days . . they had no meal. Sometimes it gave out Thursday and sometimes Friday. They would then have a quart to last them till Monday evening. The stinted daily allowance when withheld, must have reduced the wretched slaves to famine. For seventeen months, Jackson did not know that shoes had been given to them. Their feet were frost-bitten and sore. During the same period no clothes were given to them." The defendant was found guilty.

[1] "They talked about Stewart's book giving an account of Murrell's villany." 3 Strobhart 521 n.

[2] Act of 1740, sect. 38.

New trials refused: "Instances do sometimes, though rarely, occur, in which it is necessary to interfere in behalf of the slave against the avarice of his master. In such cases the law should interpose its authority. It is due to public sentiment, and is necessary to protect property from the depredation of famishing slaves." [Frost, J.]

McLeish v. Burch, 3 Strob. Eq. 225, May[1] 1849. Will, dated 1837, of Mrs. Ann McCants, who died in 1839: [226] "To my . . executors, . . I leave my wench, Nancy, and her children, Louisa and Mary, and her future issue, by reason of her faithful services, and my wench, Mary Horry, a mulatto, and her child, Augustus, and any other children she may have, with this special charge, that no other service or wages shall be required of them than may be sufficient to pay their taxes." "To Louisa and Mary, . . one hundred dollars apiece, to be employed by my executors for their education. To Augustus, . . fifty dollars, to be applied in like manner. . . [227] I give Nancy twenty dollars for a mourning suit." The testatrix sold Mary Horry and Augustus, and erected a house for Nancy and her children to reside in. The executors [230] "complied with the injunction of testatrix . . but they deny, that . . they have . . in any way violated or evaded the law against the emancipation of slaves. . . unless there be some law . . requiring owners of slaves to exact from their slaves the maximum of labor and services of which they are capable, . . The said slaves were treated in precisely the same manner by the testatrix during the latter years of her life; and hundreds of faithful old servants are so treated by their grateful masters."

Decreed: [245] "that the slaves and the legacies bequeathed to them, be the absolute property of the executors," [240] "the alleged trusts merely amount to advice," [Caldwell, Ch.]

State v. Lewis (a slave), 4 Strobhart 47, November 1849. Lewis was tried "for burglary and assault and battery, with intent to commit a rape upon a white woman, upon . . affidavit . . 'that between the hours of nine and ten o'clock at night, a negro man . . forcibly entered her house by breaking open the door, besides greatly alarming herself and two girls, . . and committed an assault on the former; deponent . . believes his intention was to commit a rape' . . The prisoner was convicted of the second offence charged, and sentence of death was passed upon him. . . O'Neall, J. . . ordered a new trial. . . The Court were unable to agree upon a verdict, . . mistrial. His Honor then ordered that the Clerk should summon another Court . . one of the freeholders was suddenly called off to his dying wife, . . and the prisoner was remanded to jail." Judge O'Neall [48] "ordered that the Clerk do summon a Magistrate, and eight free-holders, out of whom a jury of five are to be selected, for the trial . . The Clerk will endeavor, as far as possible, to select a Magistrate and free-holders, wholly unprejudiced." Both the owner and the state appealed. Motions dismissed.

State v. Martin Posey, 4 Strobhart 103 and 142, November 1849. In the former prosecution, the prisoner "was indicted as accessary to the

[1] 1 Rich. Eq. 436.

murder of his wife." In the latter, he [142] "was charged, as principal in the first degree, with the murder of his own negro, Appling," [113] "Posey had Jeff hired, . . said he hired him first to doctor some of his negroes, and understood he was a conjuror, and that the negroes probably had told him he could do something that would secretly cause his wife's death; and he said the negro wanted him to buy, and he said he would not buy the negro till he had first done something to put his wife out of the way; . . [114] App said if Jeff were gone, he could put Mrs. Posey out of the way. . . [117] App . . talked to me of his master wanting him to put his mistress out of the way, and his master was to carry him away," [116] "he was to have his freedom for killing his mistress," A few days after her disappearance, [115] "he said he had drowned her," App ran away and was hunted with dogs. The prisoner said witness's [159] "dogs could not run his negro; I said they could, if he was on the earth, and would make a track. He offered to bet $1,000. I offered to bet the last dollar I had if he would place him where I could get on trail." [119] "Elbert Posey said, if any body has to kill him [App], Martin, I think you ought, for if he is to be killed, it is to screen you. He said he would do it." [116] "prisoner . . told [witness] . . he had killed the negro, at the head of Bog branch; shot him, after tying, with pistols." He was convicted of both crimes. New trials were refused.

Mayrant v. Guignard, 3 Strob. Eq. 112, November 1849. [120] "a planting interest was to be established . . in . . Mississippi. . . They hired an overseer, and . . Mayrant started in company with the overseer and the negroes, for the West. . . Immediately after the arrival . . in Mississippi, he sold out the whole establishment—land, slaves, mules, wagons, etc."

King v. Aughtry, 3 Strob. Eq. 149, November 1849. The Rev. Benjamin S. Ogletree became possessed of two sets of negroes by his two marriages. [150] "And after he became possessed of the second set . . while working both sets together, under overseers, he made a distinction in their discipline; conforming it to the wishes of his second wife, as to the negroes she had brought him; but exercising more of his own discretion in relation to the negroes . . which . . belonged to his first wife's children,"

Dr. Toomer v. Gadsden, 4 Strobhart 193, January 1850. "action . . to recover $155, for medical attendance on Charlotte, the slave of defendant. The plaintiff offered to prove . . [194] by his . . ledger, . . not admitted, . . [a witness] said that, in 1844, Charlotte was brought to the house of plaintiff, in a deplorable condition, . . so continued for nine months, unable to leave her chamber, and seldom leaving her bed. That she had abscesses; . . was loathsome . . required nursing and constant attention; . . About six weeks . . before she left . . she recovered so far as to walk about the yard, . . not, then, worth fifty cents a month. . . The defendant claimed wages . . [A witness] testified . . Toomer said . . he had attended her at Gadsden's, and had taken her, and

was to charge nothing for his services. That he had had her near two years, and her services were worth five dollars a month." Verdict for the defendant. New trial granted: the ledger should have been admitted.

State v. Teideman, 4 Strobhart 300, January 1850. The slave of Gadsden [301] " was hired as a drayman by . . the agent of a line of vessels between New York and Charleston, to transport goods and merchandise from the vessels to the Rail Road depot." He broke open two boxes of hats and carried part of the contents to defendant. The latter was found guilty of receiving stolen goods.

State, ex. rel. Tavel, v. Jervey, 4 Strobhart 304, January 1850. The tax collector " issued an execution for a capitation tax against Tavel, as a free colored person. Tavel applied for a writ of prohibition against the levy of the said tax, and an issue was made up to try his *status.* A verdict was rendered in favor of Tavel, by which he was exempted from payment of such tax."

State v. Clark, 4 Strobhart 311, January 1850. A diamond pin had been stolen from Oakly, who lodged with Mrs. Brown. [312] " His suspicions were directed, by what his servant told him, to the Guerillas, a band of villains then infesting Charleston Neck. . . [They] were in the habit of purchasing cigars etc. at the shop of . . Fahnstock, . . [who] had a child by a negro girl, the property of Oakly; and he was induced to aid in the recovery of the pin by the threat of Mrs. Brown, that if the pin were not restored, the child should be sold."

City Council v. Seeba, 4 Strobhart 319, January 1850. " The process alleged that the defendant did permit . . certain negro slaves, whose names and owners were unknown, to assemble and loiter in his shop," [1]

Held: [321] " it is not necessary to set forth either the names of the negroes nor of their owners nor their sex," " Such assemblages usually disperse, upon the least alarm, and few can tell their names or their owners's [*sic*] names. And as to their sex, it is so easy to disguise it by a change of clothing, that the informer . . could as rarely prove the sex "

State v. Belmont, 4 Strobhart 445, January 1850. " an indictment for assault and battery. Amelia Marchant, the prosecutrix, was offered as a witness, and was objected to, as a free colored person, . . Cohen testified, . . The grand parents were free Indians, . . She is the aunt of Thomas Mitchell, and sister of Robert.—Her father, James Mitchell, was said to be a Portuguese. . . none of the family had ever paid a capitation tax. . . Judge O'Neall had granted a prohibition against the enforcement of a capitation tax upon [Thomas and Robert] . . and had ordered an issue to be made up, if the City Council were dissatisfied, . . verdict . . that the defendants were ' of free Indian descent, unmixed with African blood.' . . Against the competency of Amelia . . [a witness] testified, . . James Mitchell . . [446] was considered a colored person. He served as a Pioneer in the Artillery, and associated with colored persons. . . Mr. Cohen recalled. . . If . . [Mitchell] had been a mulatto, they

[1] City ordinance of March 1840, sect. 5.

would not have permitted Nancy to marry him. . . [447] The jury found Amelia Marchant to be 'a free person of color.'"

Verdict set aside: [449] "free Indians have been invariably tried by a Judge and jury, . . [451] 'Indians in amity excepted'[1] . . means all Indians not in hostility. But with many exceptions, as those of Indian slaves—Indians from time to time in hostility—or declared slaves, as the Yamasees were, . . The whole State policy, in making slaves of Indians, was temporary, . . It was to deter their inroads, by the intimidations of slavery, so hateful to Indian instincts. . . They never made valuable slaves, but withered away in a state so alien to the red man's nature. . . But . . All history assures us that the negro race thrive in health, multiply greatly, become civilized and religious, feel no degradation, and are happy, when in subjection to the white race. . . [452] ought we . . to hold in the category of slaves . . the spare remnants of the red man? . . would not . . Virginia, and all the blood of Pocahontas say, this is not international—it is not like South Carolina? . . I am for adhering to the decision in . . [453] Charlotte Miller *v.* [Justices][3] . . that spares the race of Shem." [Richardson, J.] Judge Frost dissented: [454] "In the incessant wars which the tribes waged against each other, many captives were taken, . . sold to the colonists. The colonists . . seized and enslaved as many as they could take of the hostile tribes. . . The number . . [455] was very great; so that after supplying the wants of the colony, many were shipped to the West Indies. . . [457] The term 'amity,' is used in the Act [of 1740], in its proper sense, when it is applied to the friendly relations of the Province with an independent . . nation or tribe."

Lawton v. Hunt, 4 Strob. Eq. 1, January 1850. [5] "The estate [of William Matthews] consisted, principally, of a plantation in Prince George, Winyaw, three plantations in St. James, Santee, a plantation and ferry in Christ Church, and some three hundred and fifty slaves, besides two houses in . . Charleston." Dunkin, Ch.: [22] "As to the disputed point, whether the [six] carpenters . . and the [six] sloop hands and boatmen . . are part of the negroes devised to Mrs. Colburn, or of the residuary estate, the same is referred back to the Master, to take further testimony." See same *v.* same, p. 431, *infra.*

State v. Boozer, 5 Strobhart 21, May 1850. "The defendants [composing a patrol] were indicted under the Act of 1841, for unlawfully whipping the slaves of . . Rikart. . . [22] Hunter had given permission to one of his negro women to have a quilting, . . Two went from Rikart's, one girl and a boy. . . the meeting was Saturday night. . . Hunter retired to bed about ten o'clock; he had been about, and the meeting was orderly. About midnight one of his negroes informed him the patrol was there; when he got to the meeting, he found the defendants; the negroes were confined and guarded in the house. He inquired of the defendants if the negroes had been impudent; they said no;

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.
[2] See p. 362, *supra.*

. . Hunter was told to point out his negroes, that they might not be whipped; he begged the defendants to be moderate; he was told 'the least said the soonest mended.' The defendants did not ask the negroes for their tickets; when Hunter asked, they all cried out that they had tickets. The defendants in turn whipped all of the negroes present, except . . Hunter's. . . [23] The jury returned a verdict of guilty."

New trial refused: [124] "How many of us have permitted to our slaves the enjoyment of a wedding party and ceremony, in imitation of the custom of the higher class, and even contributed liberally, to the good cheer of the occasion? . . Our fundamental code . . is that of 1740. It was enacted soon after a violent, barbarous, and somewhat bloody servile outbreak at Stono. Not a few of its provisions took their hue from the exigency of the occasion, . . It would seem simply ridiculous to suppose that the safety of the State or . . inhabitants, was implicated by such an assemblage" [Withers, J.]

Meares v. Meares, 5 Strobhart 167, May 1850. [176] "In 1845 . . I spoke of having met Jones removing to Tennessee with negroes, . . [Meares] said 'he is taking 4 or 5 . . of mine to my daughter, . . they have sent off all the young ones, and I can't do more than make a support with the old ones.' . . [178] Carson had taught a boy, Bob, to make shoes, . . [179] [his sons] would not let him whip the negroes when he pleased; . . and negroes would not mind him. . . [180] Often . . [his sons] said to the negroes, 'don't mind him, mind us, or we will whip you.' . . [181] he got upon his horse with Tom, a little negro boy, behind him; . . [182] [his son] ordered him down; father said no; after awhile Tom got down, and . . [the son] whipped him for not getting off at once; . . father sometimes fell off his horse, and Tom could run to make it known. Sometimes father struck Tom with a stick. . . I [daughter] have sometimes told the little ones to keep out of his way when . . [183] angry. He would throw at them, but never hurt any. . . [184] hired a negro blacksmith."

Sims v. Aughtery, 4 Strob. Eq. 103, May 1850. [107] "the two negro women . . had been purchased in Charleston, in 1805, . . they were at that time two African girls, . . a negro belonging to the estate, and worth five hundred dollars, had been sold to pay a debt . . worth probably twice the value of these two African girls, in 1805,"

Hatcher v. Robertson, 4 Strob. Eq. 179, May 1850. Will, 1840: [180] "the negroes to be sold at private sale, with the privilege of selecting their masters, at an appraised valuation,"

Lanham v. Meacham, 4 Strob. Eq. 203, May 1850. Will: [204] "I wish to exempt from sale, or division, the following family of negroes, . . Biddy, about forty years of age; Henry, about twenty-five years of age; Jesse, about twenty-seven years of age; and Lizzy, about twenty-two years of age. . . it is my will . . that my brother . . take the . . negroes under his charge, and act as their guardian, and to do all things in relation to them as he may think best." "The children of Biddy, and perhaps herself, are mulattoes."

Held: to carry out the testator's intention would be [205] " a clear infraction of the Act of 1841."

Rice v. Kennedy, 4 Richardson 42, November 1850. " Received . . seven hundred and fifty dollars . . for . . Lilly, and child, James, which . . I warrant slaves for life, and sound in every respect. . . 1836."

Dr. Sill v. Railroad Co., 4 Richardson 154, November 1850. " Alick was a likely mulatto slave of the plaintiff, twenty-five or thirty years old, skilled in the business of attending a drug store, who had been hired for . . 1847, to Toland and Curtis, druggists in Columbia, . . [155] without permission from his owner or employers, he went on the rail road of defendants from Columbia to Charleston, thence in the steamboat . . to Wilmington, and thence to New York, whence he has not been regained, though the plaintiff has used all proper exertions. . . Eaton . . born at the North . . [who] kept company with negroes, . . bought [the same day] . . two tickets, one for himself, and one for a white girl of bad character . . [157] but none for Alick " though " professing to have charge of Alick," [156] " Slaves, with passes, were often allowed to pay for themselves, . . The death of [the conductor] . . prevented exact testimony as to . . Alick's passage money, . . [157] The lax rules . . the indifference manifested by the neglect of all inquiry at Columbia, or of passengers on the way, . . were brought to the view of the jury; . . found for the defendants." New trial refused.

Guillemette v. Harper, 4 Richardson 186, November 1850. Report of Judge O'Neall: " This was an action of trover . . [187] there was also a count in case against the defendant [administrator, with the will annexed], for inducing the . . negro to runaway . . Edward Quinn . . resided in . . Georgia; he visited Ireland, his place of nativity, in 1832, or 1833. . . carried with him . . Cherry and her son Patrick, . . In his will [dated March 1834] he directed all his negroes, including Cherry and Patrick, to be set free in Georgia, if an act of the Legislature could be obtained . . if not, to be sent wherever they could be free. In his codicil [September 1834] he . . alters this in relation to Patrick. . . 'I . . bequeath . . £50 sterling to the black child . . Patrick Edward Quinn, and I allow my wife to take care of him, to give him a good education, and when he arrives at the proper age, to send him to a decent trade.' At the death of the testator [in Ireland, in 1834], Patrick was in Ireland; so was . . Cherry, and a child born in Ireland, and which the codicil . . states, 'she swore was the natural child of . . McDermoth.' . . The widow . . married . . Clarke . . removed [in 1838] to Charleston, . . [188] and brought . . Patrick, . . between 10 and 12 years old. . . Clarke . . said . . that 'Patrick was not living with him and his wife as a slave, but that he was free,' . . 1845 or 1846 . . sold for debts of Clarke, and purchased by . . his wife, who was a sole trader. She sold him, in 1846, to Mrs. Guillemette, then a *feme sole*; she intermarried, in 1848. . . In June . . before her intermarriage, Patrick escaped . . The jury were told, . . Patrick having been . . carried by the testator to Ireland, he became . . *free*. That it was, however, true, if

his master had not intended he should be free, on returning with him to a country where slavery was acknowledged, he would still be a slave. . . But it was apparent from the codicil, the testator treated him as free; . . [189] that the personal estate in Georgia was in the defendant; and if they believed from . . (the letters) that Patrick came to Savannah before he went to New York, the legal estate would be in the defendant. . . The jury found for the defendant;"

New trial refused: [190] "According to Somerset *vs.* Stewart,[1] . . he became free. . . *that* case carries the law further than I would willingly acknowledge, . . But if the master carries the slave to Great Britain to set him free, or while there assents in any way to his freedom, there can be no objection to the validity of freedom thus acquired. . . if . . against his will, his slave be allowed to go as free, I have no doubt he may reclaim him—or if the slave returns to a country where slavery is recognized, he *ipso facto* is remitted to his original condition. . . [191] the codicil . . shews that he had ceased to regard him as property. . . [192] Nor did he come to the State of his own will; for he was a minor . . the silence of the negro, when sold . . could not affect his right to freedom; for the status arising from his color compelled him to be silent. . . the plaintiffs have no right of property; . . the verdict below is right." [O'Neall, J.]

State v. Laney, 4 Richardson 193, November 1850. "an indictment for gaming with a slave,[2] . . the defendant played at cards with Jim, . . no proof . . of any betting, nor . . what game was played. . . The jury found the defendant guilty;"

Held: [195] "the kind or name of the game is no part of the offence, any more than whether there was betting,"

Atcheson v. Robertson, 3 Rich. Eq. 132, November 1850. Robertson's will, dated 1840: [136n.] "As it may be impracticable to divide the negroes . . among the legatees . . and as I desire to consult the future comfort of my negroes, I hereby direct . . my executors, after my death, to select three disinterested persons to appraise my said negroes, and my executors are hereby . . required to allow my said negroes to select their owners, who may be permitted to take them on a credit of twelve months, at the said appraisement," "the reason, . . why the executors sold the slaves in a mode different from that prescribed by the testator: . . 'that nearly all . . were either unwilling or unable to select persons who would take them, under the provisions of the will, at the appraisement, and as the legatees were very numerous and . . a large portion . . reside out of the State, . . it was deemed best for all concerned, that the said negroes should be sold [at public outcry].'" Dunkin, Ch.: [137] "Strictly, this was not authorized by the will, although the executors might very well have misapprehended their power, and especially as no objection was made from any quarter."

Lewis v. Price, 3 Rich. Eq. 172, November 1850. [187] "There were four negroes: Doll was old, and not worth more than the expense of

[1] Lofft 1. See vol. I. of this series, p. 14.
[2] Act of 1834. 7 St. at L. of S. C. 469.

keeping her; the successor of Price paid fifteen dollars a year for keeping her. Mary was kept about the house, and so was Louisa, except one or two years; she was a breeding woman. Margery . . was hired out at sixty dollars,"

State v. Friday (*slave of Lopez*), 4 Richardson 291, January 1851. "Friday . . had been convicted, by a Court of Magistrates and Freeholders, of murder;" "application was made to a Judge for a new trial, which was refused." Held: no appeal lies to the Court of Appeals.

Kelly v. City Council of Charleston; *Holmes v. same*; *Toomer v. same,* 4 Richardson 426, January 1851. "actions on the case for negligence, mismanagement and lax discipline in keeping the workhouse . . Nicholas, the slave of . . Kelly, was confined in the workhouse, under sentence, by a Court of Magistrates and Freeholders, of imprisonment for three years, each alternate month in solitary confinment. George, the slave of . . Holmes, and John, the slave of . . Toomer, were committed by their owners for safe keeping. At the periods when his sentence did not require that he should be kept in solitary confinement, Nicholas, who was proved to be a very bad, ungovernable and reckless fellow, and who held that he was not a slave, and that he owed obedience to no one, was allowed to be in the yard, and . . had full communication with George and John, and other slaves. . . [427] July, 1849, Nicholas, being in the yard where negroes for sale were kept, resisted an attempt made by one Gilchrist to take out a negro girl he had bought, and beat Gilchrist's man-slave, Scotland, who was directed to take her out. Gilchrist reported the state of insubordination to the Mayor, who went to quell it, accompanied by several officers and two men of the guard, all without arms. In the attempt made to reduce Nicholas to order, he resisted, and struck the master of the workhouse, and George and John, and some other negroes in the yard taking part with him, the guard was overcome, several of them being badly hurt, and Nicholas, George and John broke out. They were recaptured in less than a hour, and restored to confinement. George . . had been entrusted, by the master, with the keys of some of the cells, and allowed to lock up the prisoners therein at night. The three slaves, Nicholas, George and John, were tried for the violence committed upon the white men, found guilty, sentenced to be hung, and executed. . . as . . to Nicholas, his Honor . . charged . . It was his voluntary criminal act, . . The jury . . allowed nothing for the loss of Nicholas. In the case of Holmes and Toomer, . . plaintiff nonsuited."

Held: [434] "It was no act of defendant that made Nicholas a pestilence and the other slaves susceptible of the infection." [Withers,J.]

Ellis v. Welsh, 4 Richardson 468, January 1851. Action on the case. "The plaintiff . . was the owner of . . Morris, whom he hired to . . keeper of the American Hotel in Charleston, at $150 per annum. Morris was intelligent and capable . . and worth at least one thousand dollars." In July 1848 a white man went to Welsh, the defendant, captain of the *Columbus,* a regular packet between Charleston and Philadelphia, [471] "to engage a passage for his servant. . . The day after, Morris came on board, and asked if a white man had been there and engaged a passage

for him; . . He referred Morris to Baker, . . Morris was well dressed, had a watch, etc." Baker [469] "was the agent of the *Columbus* . . carrying of passengers was the chief business; many free negroes went. . . [470] He . . looked at Morris's papers . . [which] certified that Thomas Chambers had been born free, in North Carolina." "He sent Morris away, and told Morris he would not be taken as a passenger, unless he produced a white man to certify that the papers were genuine, and he, Morris, the person named. . . The next day Morris brought a person, genteelly dressed, who said he had known Morris from his early youth, and knew him to be free; . . After he had received from Morris his passage money, he gave Morris an order, by the name of Thomas Chambers, to Welsh, for his passage. . . Morris went aboard without concealment. The next morning . . Morris was missed from the Hotel, and it was believed had gone in the *Columbus*." Baker telegraphed a description of Morris and followed to Philadelphia. As soon as he arrived, he informed one of the owners of the boat. "They offered a police officer a reward to take Morris; but he declined the undertaking. Baker also went to an attorney, who advised him that proof of property and a power of attorney were necessary for the arrest of Morris." [469] "Welsh cursed the telegraph office; and said, if it had forwarded the dispatch in time, he could have put Morris in jail in Delaware; said that, as soon as the steamer reached the wharf, enquiry was made from the crowd on the wharf, if the captain was aboard. Welsh asked 'if any news.' He was answered, 'yes, there is a telegraphic dispatch of a fugitive slave aboard.' He said the case then was hopeless." "Morris was noticed . . to be the first to go ashore. . . [472] It was submitted to the jury, whether practically, though not legally, . . [freedom] did not follow the escape of a slave into one of the free States; and they were told, if such were the consequence, that it exacted the utmost care . . [473] from the master of a vessel that he should not give passage to a slave into a free State. . . submitted to them whether Baker had used the necessary precaution . . [474] verdict for the plaintiff for $1,140." New trial refused.

Swinton v. Egleston, 3 Rich. Eq. 201, January 1851. Will of Hannah Swinton, dated 1832: [202] "I . . bequeath twelve shares . . of my five per cent. stock, . . unto my executors, in trust . . that they shall pay over the interest . . to my slave . . Minda, for . . her natural life, quarterly, . . and at the death of . . Minda, the said . . stock . . shall go to the Sabbath School of the Circular Church, No. one;" The testatrix died in 1843. Held: the legacy to Minda is void under the 4th section of the act of 1841.

Crossby v. Smith, 3 Rich. Eq. 244, January 1851. [251] "It appears that most of the negroes were young, many of them incapable of laboring, and that the few, who by age were capable, either could not, or for want of a better control than their aged mistress was able to exert, would not, make crops adequate to the support of themselves and the young negroes."

Skrine v. Walker, 3 Rich. Eq. 262, January 1851. Will of Mary Vereen, dated 1832: [263] "I . . bequeath unto my friend, Mary S. M.

Hardwicke, my negro woman, Phillis, together with her future issue . . trusting that the said Mary . . will fully comply with my wishes, respecting . . Phillis, and her children which may hereafter be born; and it is further my will . . that . . Phillis should be allowed to keep with her, and have the services of her child, Martha, during the lifetime of . . Phillis; and at her death, I . . bequeath unto my great-grand-daughter, Catharine . . Martha, together with her future . . increase, under the same conditions," The great-grandchildren were made residuary legatees. The testatrix died in 1833, and Catharine [264] "about . . 1839, then aged about ten years, . . Martha was from two to six years of age at the death of Mary Vereen, and she has since had issue, the slave, William. Mary S. M. Hardwicke died about . . 1837, . . after her death, if not sooner, Phillis lived in a house in Georgetown, which was conveyed to her husband, Ben, a negro who had also formerly belonged to Mrs. Vereen, and had passed into the ownership of Benjamin King, who paid taxes for him as a slave, but permitted him, in most respects, to exercise the privileges of a free negro. The plaintiff [residuary legatee of Mrs. Hardwicke] lived at Cape Romaine, and . . Waterman was his agent at Georgetown, but neither . . exacted any wages from Phillis or Martha, nor exerted any act of ownership over them. Their taxes, as slaves, were paid by the owner of Ben. The wishes of Mary Vereen respecting Phillis . . appear pretty plainly by the will itself to be, that Phillis should be held in nominal servitude only: and the acts of the parties place this beyond doubt. The plaintiff, in his bill, . . [265] states, 'that . . Phillis having been a favorite servant of her former mistress, and being now aged and infirm, and standing in need of the aid and services of some younger person, the plaintiff had permitted her, from the death of his sister, Mrs. Hardwicke, . . after the example of his . . sister, and in compliance with the testamentary wishes of Mrs. Mary Vereen, . . to pass her life in exemption from labor, with the attendance of her daughter upon her person, which he conceived himself bound in conscience and good faith to do, though a departure from his legal rights; and to this end he permitted them to live in Georgetown, without any requisition upon the labor of Martha, further than necessary to the support of the mother and infant child, also the subject of this suit.' On 31st March, 1847, the defendants [residuary legatees of Mrs. Vereen] took possession of . . Martha and William, . . claim them either as bequeathed to them by Mary Vereen, or under their seizure, as set free by the tenant for life of Phillis, in violation of the Act of 1800." [263] "The plaintiff . . seeks to compel the defendants to deliver [them] . . to him."

Bill dismissed: [268] "The testatrix has not given, directly at least, any legal interest in Martha to Mrs. Hardwicke, . . If the wife of my coachman, both slaves, should become sick, during the . . [269] absence of my neighbor, her owner, and I should write a note to his overseer, that the coachman might remain with his wife, and yield her any service; could it be pretended that my neighbor had thereby received my bill of sale of the coachman? . . A slave, although a chattel, is also a person, and, to some extent, capable of the acquisition of property, for the benefit of the

master. But a privilege attending the person of the slave, or a trust for him, or an executory contract made with him, cannot be judicially established, either for the slave or his master. . . the legal interest in Martha is given to the . . residuary legatees, and the recommendation that she might be allowed to attend . . Phillis, is addressed to their benevolence . . [270] This view supersedes the necessity of . . consideration of the question, whether, if the plaintiff had title . . his practical emancipation of them did not subject them to seizure . . If both of the questions discussed, as to the title and seizure, had been decided in favor of the plaintiff, we should still have refused to him the specific delivery of the slaves . . [which he] seeks . . not from their peculiar value to him which damages would not compensate, nor, indeed, for his own service, but for the accommodation of an old negro woman; and we should have left him to his redress at law." [Wardlaw, Ch.] Dargan, Ch.: [271] "I concur in this decree, on the ground that there was a derelection of these slaves on the part of Mrs. Hardwicke, their legal owner ['as the bequest took effect before the Act of 1841 was passed'], and that the title was in the defendants as their captors under the provisions of the Act of 1800."

Johnson v. Clarkson, 3 Rich. Eq. 305, January 1851. Will of John Clarkson, dated October 2, 1840: [306] "I . . bequeath to my brother, William Clarkson, all of my property on certain conditions made with him.—Should he decline taking it, I will and bequeath it to the Rev. Wm. H. Barnwell on the same conditions. . . I appoint . . William . . my executor." With the will were [308] "found . . several . . [loose] papers [all signed by the testator.] . . [309] To William Clarkson.—By my will all my property will come into your hands on certain conditions, or on your declining to take it, into the possession of the Rev. William H. Barnwell, on the same conditions. Some of these conditions I now express . . All of my negroes must be emancipated, either immediately or at any time the Rev. Wm. H. Barnwell shall think advisable. Should immediate emancipation be deemed inexpedient, the proceeds arising from the lands and negroes, must be placed at interest until they are liberated, and then this accumulated sum, together with the sale of my lands and other moneys not specifically appropriated, shall be given to them, . . If the law forbidding the emancipation of slaves in South Carolina is then in force, so that *all* my negroes must be removed, then the husbands or wives of any of mine belonging to other persons, must be purchased from monies of my estate not vested in lands, if there is a sufficient amount, but if there is not . . [310] then so much as is necessary in addition, must be taken from the sale of the lands. The purchase is only to be made, provided no arrangement can be effected by which the husbands and wives will not be separated. . . I wish (if possible) that the negroes should not be sent out of America. I will expect you or the Rev. Mr. Barnwell, whoever receives the property, to make a will providing for the emancipation of my negroes, together with their husbands and wives belonging to other persons as stated above, if the negroes must be sent and remain out of the neighborhood. . . October 7th 1840. Husbands and wives must on no account be separated. . . Nov. 25th

1842. I became of age on the 5th of Jan., 1832. . . [311] Betty came into my possession 5th Jan., 1832. George, Caesar, Jack, Henry, David, Robert,—owned a fourth part of these six negroes until 8th Nov., 1836, when George and Caesar were taken by me in the division that was made at that time. George owed me $112 in August 1841, and has paid me very little I think since that date. But credit him with $25. Anthony was sold . . Dec., 1832, . . I wish a calculation to be made as to what the above-named negroes could have earned me after paying all their expenses, which sums I wish paid to them—I mean during the time I owned them. Deduct the amount which George owes me, and will owe me, unless he pays. Caesar's wages should be counted up to 1837, besides that he will be on the same footing with the plantation negroes. Betty and George, besides their wages, will be on the same footing with the plantation negroes. . . Nov. 25th, 1842. . . I understand that my will cannot be lawfully carried into effect. I wish no evasion of the law practised, but application to be made to the Legislature to permit it to be executed. . . January, 1843. Should my negroes be emancipated, instead of giving to them all the proceeds from the sale of my plantation, I bequeath $5,000 of the said proceeds to Miss J—— J——, (you will know who I mean,) and $5,000 to Miss A. E. M., (Rev. J. S. Hanckel can tell you who I mean,) and should my negroes not be emancipated, and there be no intention of its being done, I wish my property divided into five equal parts: one given to missions and charity; one to my brother William Clarkson; one to my brother T. B. Clarkson; one to Miss J—— J——, . . [312] and one to Miss A. E. M. . . Rev. Mr. Barnwell must be consulted as to the propriety of giving legacies to ladies. I wish it done, if there be no impropriety in doing it. . . Feb., 1849. I do not wish my negroes forced to go to Africa, if they do not wish it. . . Aug. 13, 1849." "The testator died . . October, 1849, . . The estimated value of the . . real estate is $23,500, and of his personal estate about $93,000. . . the complainant . . is the only child of a deceased sister." [306] "is informed and believes, that the mind of his uncle was in a diseased state in relation to his right to hold his negroes in slavery; that he spoke from time to time of emancipating them, but never came to any fixed conclusions, and plaintiff apprehends and so charges that the devise and bequest to . . his brother, was made by . . John Clarkson with a view that the said slaves should, after his death, be removed from this State and be emancipated; or that they should be held in nominal servitude; and plaintiff expressly charged [charges?] that the said bequest is made void by the Act of Assembly to prevent the emancipation of slaves, passed the 17th . . December, eighteen hundred forty-one; and that the said executor is bound to deliver up the said slaves to the next of kin."

Decreed: [317] "that a writ of partition issue" [315] "These [loose] papers . . have no legal operation. . . [316] The defendant does not state very particularly . . what were the conditions . . on which the slaves and other property . . was confided to him. . . confessedly for the benefit of the slaves . . [317] so far as the law would permit. But the law permits no such benefits" Affirmed.

State v. Nathan, 4 Richardson 513, May 1851. See same *v.* same, p. 428, *infra.*

Hamilton v. Feemster, 4 Richardson 573, May 1851. "The declaration . . complained that the defendant had arrested, and caused . . a magistrate, to commit to jail, as a runaway, Frank, the slave of plaintiff, when Feemster knew that he was not a runaway, . . [574] Plaintiff had a field within ¼ of a mile of defendant's; in that field, a negro, supposed to be Frank, was ploughing . . 1849. At sundown he sent the horse . . home by another negro. He was captured in the defendant's watermelon patch; . . and confined. A note was despatched . . 'We have caught . . Frank where he had no business, and have him in custody. We wish you to come and attend to the matter immediately, or let the law take its course. We wish you to examine whether all the rest of your boys are at home.' Answer by plaintiff: 'Sir, you can use the law, or do as you please. I am not very well, and can't come to night.' Soon after . . Feemster . . went to Hood, a magistrate, having the captive tied, under custody of defendant's son. . . [575] Frank was in the habit of running away, . . Defendant told Hood he had caught him in a place he ought not to have been, and wanted a commitment to take him to jail as a runaway. Before this time, Feemster had said he did not know whether Frank was a runaway. Having procured a paper from the magistrate, he carried Frank to jail, delivered him as a runaway, received the fees provided by law in such cases, and, on the second day thereafter, the plaintiff released him from jail, on the payment of the fees to the sheriff. . . The jury returned a verdict of one hundred dollars for plaintiff." Motions for nonsuit and new trial dismissed.

Bunch v. Smith, 4 Richardson 581, May 1851. Bunch had agreed with Smith to sell him Bob, Binah, and her two children, for $1100. Smith "stepped up to Bob, and asked Bob how he would like him for a master. Bob said he would not suit. Smith replied . . 'I have not come to consult you; I have bought you; and if you run away, from January to January, you are mine,' and advised Bob to reconcile himself to the change, and give him no further trouble. Soon after, Bob, having finished a job at which he was engaged, got up, and was walking towards his house, when Smith advanced to him, and said . . [582] 'it is of no use for you to run, for I have my dogs, and can catch you.' Bob replied, that he would run from no man. Smith spoke a word of encouragement to him. Bob went to the negro house; Smith waited awhile, until the cart came. He then ordered Binah to go and get ready; that he wanted her master, while they were there, to deliver them to him. She went to the negro house; Bob was standing at the door; Smith ordered Bob to go and get ready. He walked off, as if going round the house; Smith called to him, and he went into the house. Smith, Bunch and Gilmore were standing near the door, when Bob came out . . with his throat cut, and bleeding; he made a few turns in the yard, fell on his knees, sank to the ground, and there bled to death. When he came out, Smith told Bunch he had better get the doctor. After the negro was dead, Smith said to Bunch it was no trade; to give to him, Smith, his notes, and he

would give back to Bunch his bill of sale, and drew the bill of sale from his pocket. Bunch hesitated and said, he was not aware whose loss it should be. Smith said to Bunch, it is your loss; the negroes were not delivered. . . A new trade was made for Binah and her two children, for $650. . . [583] There was some evidence that Bunch was of a temperament to be agitated by the shocking spectacle of Bob's death. . . It was submitted to the jury to determine whether Bob . . [584] had been delivered . . before Bob's death. . . The jury found a verdict for the plaintiff for $450, with interest," Motions in arrest of judgment, for nonsuit, and for new trial, dismissed.

Cox v. Buck, 5 Richardson 604, May 1851. Will, 1820: "that all my negroes . . remain together until they shall build a house . . and after . . house is done, all my negroes . . to be equally divided betwixt my two sons,"

Broughton v. Telfer, 3 Rich. Eq. 431, May 1851. In 1831 Remley [432] "executed a deed, by which, after reciting that he was the father of certain slaves, namely, Elizabeth, Catharine, Ann, Eliza, Cinda and Harriet, and that, being unable to emancipate them, he desired to give them the benefit of their labor, and to suffer them to enjoy, as far as practicable, all the privileges of free person, etc., in consideration of the love . . which he bore to said slaves, and of the sum of $5, and for 'divers other good and valuable considerations,' he . . 'conveyed and delivered' unto . . Smith, . . Shaw, . . Waterman and . . Telfer, the said slaves, in trust, to treat them with kindness;—protect them in their just rights; exact from them no wages; permit them to go where they please, and to appropriate to their own use the proceeds of their time and labor: and, in the further trust, that, if any attempt should be made to enslave them, to convey them to some non-slaveholding State, etc. . . On the same day . . [he] executed his . . will . . in which he . . recognized the deed, and . . bequeathed his whole estate to the [said] trustees . . in trust for the slaves . . and appointed the trustees executors. . . Remley died . . 1839. . . defendant made seizure of the slaves [September 7, 1846] under the Act of 1800; . . June, 1847, the will was admitted to probate, . . August, 1847, the plaintiffs [heirs at law of Remley] filed . . bill . . charged that the trusts . . were void," The bill was dismissed by Chancellor Dargan: [435] "The case presents a perfect parallel to that of Carmille *vs.* Carmille,[1] . . In *this* case, as in *that*, there was an . . undisguised attempt to evade . . the Act of 1820, . . I have never been satisfied with the decision of Carmille *vs.* Carmille. I cannot pass it without expressing my dissent and disapprobation. It is founded upon what I conceive to be a very erroneous construction of the Act of 1820. That Act declares that there shall be no emancipation but by the Legislature. But the decision in Carmille *vs.* Carmille declares that the emancipator has only to be secure of his trustee to effect the emancipation of his slaves, . . [436] in as perfect a manner as if the Act of 1820 was not on the Statute Book. He is thus enabled to do by

[1] P. 381, *supra*.

indirection, and through a very flimsy and barefaced evasion, that which the law inhibits from being done by direct means. The decision is not in harmony with the spirit, the policy, or even the language of the Act. It would have been better to have held these evasions a fraud upon the law, and to have given the Act a construction which would have made such a deed as this simply void . . not only as to the trusts, but as to the title . . and in the case of wills, to have held the bequest charged with such trusts void, . . But Carmille *vs.* Carmille stands in the way of such a decision supported as it has been by a recent case: Carmille *vs.* Carmille, and similar cases, led to the Act of 1841. But in the case before me, the Act of 1841 does not operate. The deed and the will were both executed, and the testator, Wm. Remley, died, before the passage of that Act. The case must be decided . . by the Acts of 1800 and 1820. I am bound to submit to the authority of Carmille *vs.* Carmille, and of McLeish *vs.* Burch and Taylor,[1] decided by the Court of Errors, at May Term, 1849. And, according to these decisions, the complainants have no right. There is another aspect . . unfavorable to the claims of the complainants. Whether we consider the slaves to have been illegally manumitted by Remley in his life, or . . to have been done by his grantee or legatee after his death; in either case, the slaves were liable to manucaption under the Act of 1800. And they were formally seized for this purpose by the defendant, Telfer, previous to the filing of this bill." Affirmed.

In re Susan Huff, 6 Rich. Eq. 391n., June 1851. [392n.] "Without any sense of religion, ignorant who made her, unable to read or write, very hard of hearing, scarcely able to count ten;" she "owned some eight slaves . . derived from her mother and grandfather." "witness does not think she was competent to contract marriage; . . The ceremony was performed . . It does not appear that the marriage was previously known to any of her relatives. . . [Her husband] sold all her negroes,"

Compton v. Martin, 5 Richardson 14, November 1851. "The defendant hired to the plaintiff George, a young negro man, for two years, for . . one hundred and forty dollars. The plaintiff was to instruct George to make shoes. . . After he had been a few days with the plaintiff, George went off to the defendant's. . . There was evidence of some condition annexed to the hiring, that if George was dissatisfied, after two or three months trial, the contract should be at an end. . . George, as an apprentice, would earn for the plaintiff, during the first year, thirty-five cents a day, and during the second year, fifty-five or sixty cents a day."

McClenaghan v. Brock, 5 Richardson 17, November 1851. [18] "the plaintiff . . had taken the boat [of which Brock was captain] at Charleston, and had placed Richard . . on board for transportation to his plantation on Pee Dee, . . Richard was on the lighter [taken in tow] when . . wounded; . . [19] Henry, a bright mulatto, (a free negro, I presume,) ['intelligent, civil and humble in his demeanor,'] was employed . . [as]

[1] P. 413, *supra*.

second engineer; that immediately . . Richard, was seen wounded, . . the mulatto was in a state of agitation . . with a gun in his hand . . used it in shooting sea-fowl." [18] "The wound . . was so severe as to require immediate amputation"

Nonsuit, [28] "properly ordered:" [26] "slaves . . must be considered as passengers; . . He has . . reason. . . he is to be carried and treated *far differently* from goods, or brutes. . . [27] the injury . . was . . the consequence of his own act, . . if [Henry] . . was a free man, as we understand was the fact, . . the defendant would be no more liable for his wilful act, than . . for the act of a white servant." [O'Neall, J.]

Gardner v. Williamson, 5 Richardson 28, November 1851. "defendant was to furnish ten hands, . . and plaintiff [overseer] to work as the eleventh hand;"

Hays v. Hays, 5 Richardson 31, November 1851. [34] "She [a white woman] was then residing in a negro house."

Priester v. Augley, 5 Richardson 44, November 1851. "Josiah [fourteen year old son of the defendant] . . saw some one going off with sugar cane, and he shot [as directed by his father] . . to scare him. . . The night was dark, but a negro held a torch, . . the shot killed Adam."

Held: [46] "no one has a right to kill a mere trespasser. . . the father is liable,"

State v. Nathan (*slave of Gabriel South*), 5 Richardson 219, November 1851. [220] "Elizabeth Mitchell . . maketh oath [February 26, 1851] . . and saith that, . . 22d of February, . . at the residence of my mother, . . I was attacked by a negro boy . . I had a hard scuffle; he got me down on the ground and choked me until he left marks on my neck, and by my promising him . . money . . he let me go. I went in the house and gave him one dollar; . . he left;[1] . . I am not acquainted with . . Nathan, but from . . what I have heard, I believe it to be him; . . Nathan . . was . . tried before . . magistrate, and five freeholders, under the charge of an 'assault and battery with the intention of committing a rape.' . . the prosecutrix was sworn, . . [221] says . . Nathan, is the same boy at the bar, . . The court found the prisoner guilty of 'an assault and battery, and say that he shall have one hundred lashes on the bare back, with a switch—fifty this evening and fifty on Monday week, at the Poplar Spring meeting house.' In conformity with this sentence, the prisoner was punished. . . April, 1851, Elizabeth Mitchell made a second oath . . 'She . . run to her sister's . . upon returning . . she found the place where she got the silver dollar ransacked, and a ten dollar bill gone, . . has reason to believe . . done by . . Nathan.' . . a second warrant . . was issued, . . 'that Nathan . . one silver dollar . . from the person and against the will of . . Elizabeth Mitchell . . [223] feloniously did steal,' . . found guilty, and sentenced to be hung:" Judge O'Neall, in May, ordered a writ of pro-

[1] See State *v.* South, p. 433, *infra.*

hibition, [225] "that the slave be discharged from prison and delivered to his master." [224] "1st. The prisoner's offence is not robbery. 2d. The former conviction is a bar to any other proceeding. . . [225] the Court of Appeals set aside the order . . holding . . that the only remedy was by appeal for a new trial.[1] . . new trial . . resulted in a mistrial. . . July, . . the prisoner was . . tried, the third time, for the robbery. . . [226] The Court found [him] . . guilty, and sentenced him to be hung, . . South appealed . . [231] opinion of a majority of the Court . . That the result of the former trial [for assault, etc.] . . was no bar to this prosecution, . . That the facts . . in this case, taken in connection with the result in the former case, constitute a case of robbery: . . That the evidence concerning the general transaction which was in proof on the first trial, . . was properly admitted:" Judge O'Neall dissented: [232] "there is no larceny: it is the delivery of a dollar without compulsion. . . The prisoner has been severely whipped,—and even if that was too small a punishment, do the humane principles of the common law demand any thing further? . . If the prisoner was *a white man and not a negro*, could such a course receive the countenance of any one? . . [233] I am sure, I am more gratified by the consciousness, that none of the blood of this negro will rest upon me, than the prosecuting parties can be, who will now be gratified by offering up his blood, as a sacrifice on the altar of public justice."

Miller v. Anderson, 4 Rich. Eq. 1, November 1851. [2] "By the first wife, who died . . 1824, he had three children—Edmund, . . about five years of age at his mother's death, and Mary, . . about two years, and Emily . . about four years, younger. . . [3] on the morning after the mother . . was buried, their father, in the presence of [witnesses] called up three little negroes, Bob, (about the size of Edmund,) Sue, (about the size of Mary,) and Elvira, (about the size of Emily,) and putting Bob's hand into that of Edmund, Sue's into that of Mary, and Elvira's into that of Emily, made the gift, saying the negroes were to be theirs (the children's) at his own death, and that what he did was done in compliance with his wife's death-bed request." In August 1846 he "spoke of the reason of his not having given possession, which was, that he had no more negroes than he wanted, and that he disliked separating his families of negroes and substituting others or strange negroes in their stead, for negroes were troublesome at best, and that it was time enough for them to have them at his death," Held: no valid gift.

McMullen v. Cathcart, 4 Rich. Eq. 117, November 1851. [122] "The negroes of the testator, . . (eleven in number,) were all bid off by . . Cathcart, with the exception of one negro boy . . bid off by . . Dunovant, but the boy being anxious to go with his kindred, . . Cathcart purchased him from Dunovant, at an advance upon his bid."

Venus Huger and Sarah, her child (free persons of color), suing per prochien ami, v. Barnwell (a free person of color), 5 Richardson 273, January 1852. "The plaintiffs complain that the defendant took them . .

[1] Act of 1833. 6 St. at L. of S. C. 489. State *v.* Nathan, 4 Richardson 513.

and holdeth them to their damage. Demurrer . . that the plaintiffs being persons of color, can have the writ of ravishment of ward[1] . . and *homine replegiando* is inapplicable to their case. . . sustained"

Thorne v. Fordham, 4 Rich. Eq. 222, January 1852. [223] "John Stocks Thorne, by his last will . . executed August 11, 1824, appointed . . Fordham executor . . and after a specific devise disposed of his estate as follows: 'All the rest of all my . . estate I give unto . . Fordham, to be held in trust by him for John, Thomas, Philip, Rebecca, Caroline and Susan Thorne, persons of color, and their heirs forever, to be applied to the sole use and benefit of them,' . . The testator died the next day . . The plaintiff is a black woman, the mother of the legatees, John, Thomas, Philip, Caroline and Susan, who were recognized by the testator as his natural children. She was formerly the slave of the testator; was emancipated by him in 1811, and was afterwards called by the name of Rebecca Thorne. Her title to the legacy is resisted in behalf of another Rebecca, a brown woman, sometimes called Rebecca Thorne and sometimes Rebecca Fordham. Her mother was Judy; and to be her father seems to have been claimed by both testator and executor. Judy and her child Rebecca were bought as slaves by the testator, November 18, 1817, for $700; and they were transferred by him, November 27, 1817, to his friend Fordham, on a nominal consideration. Rebecca, the brown, was always practically free; and in 1846 she established her freedom against Fordham in the Court of Law, by process *de homine replegiando*. . . she lived in the family of the plaintiff in early life until . . 1825, when she was removed to the house of another woman of color. She was maintained and educated and otherwise treated as the legatee, without any adverse claim, until about the time of filing this bill, . . 1848, although the executor has not paid over the principal of this share of the estate. The plaintiff, Rebecca, the black, relies principally upon the facts, that, at the date of the will and of the testator's death, . . [224] she had acquired by reputation the name of Rebecca Thorne, . . and that she was then free, and capable of taking on the terms of limitation in the will to her and her heirs; and she urges that the other claimant was not, at the date of the will, known as Rebecca Thorne, and that in fact she was a slave, and incapable of taking to herself and her heirs. The proof is clear of the title of the plaintiff to freedom and to the name of Thorne; but it is not decisive against the equal claim, in these particulars, of Rebecca, the brown. . . Unfortunately for the plaintiff, she is the strongest witness for her adversary. Independent of her acts and declarations, it would be difficult . . to find in the proofs, distinct evidence that Rebecca, the brown, had acquired the name of Thorne at the death of the testator, although she had been so designated for more than twenty years. Immediately after the death of testator, . . plaintiff gave a receipt to Fordham for $15 for the use of the children of testator, describing therein Fordham as 'trustee for my children, John, Thomas, Philip, Rebecca, Caroline and Susan Thorne, as per

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.

the will of their father, John S. Thorne.' At the same time she signed an acknowledgment of having received from Fordham, 'trustee for the children of the late John S. Thorne, for the use of said children,' various articles of apparel, a watch, umbrella, etc. On August 24, 1824, she signed a receipt to Fordham, 'trustee for the children of the late John S. Thorne, viz: John, Thomas, Philip, Rebecca, Caroline and Susan, as per the will of their father,' for $102.50, 'to purchase mourning for the female children.' . . [225] 1844, she accepted a conveyance for her life of a house and lot in Boundary street in this city, from John, Philip, Rebecca, the brown, Susan and Caroline, (Thomas then being dead,) in . . which conveyance the grantors designate themselves by the name of Thorne, and as children of the testator, and devisees of said house and lot under his will, and convey the premises to their 'mother, Rebecca Thorne,' as a residence for life. Rebecca, the black, is unlettered; and the fact, that she is mentioned in this deed of conveyance and in the earliest receipt, as mother of the other Rebecca, is urged as proof of fraud on the part of the defendant. It is more natural, however, to attribute this mistake to the ignorance of the scrivener. . . [226] These acts of the plaintiff . . with . . her acquiescence for twenty-four years, are serious obstacles to her claim. . . The order in which the name of Rebecca is inserted . . is a circumstance . . of some weight . . So, too, the description in the will, of Rebecca, and the other legatees, as 'persons of color,' is a pretty strong circumstance against the plaintiff. It is not according to the use of language in this region to speak of one altogether black as a person of color. The phrase is almost exclusively applied to one of mixed blood and color." Held: Rebecca the black is not entitled to the legacy.

Lawton v. Hunt, 4 Rich. Eq. 233, January 1852. See same *v.* same, p. 416, *supra.* Master's report: [234] "I attach great importance to the domiciliary arrangements of these negroes,—that they had families at Tibwin [devised to Mrs. Colburn]—that their garden patches were there—and in the case of the boatmen, that by reason of their frequent absence, Mr. Mathewes had their patches cultivated . . for them. . . an important point, also, that they were on the allowance list at Tibwin, and I find accordingly, that . . [they] are not residue, but that they pass under the devise to Mrs. Colburn." Wardlaw, Ch.: [244] "Another clause of the will has some bearing as to the question concerning the carpenters and boat hands, certainly so far as Nat, one of the boat hands, is involved: 'It is my will that . . old Nat, (commonly called Capt. Nat,) and old Patty, the dairy woman, at Tibwin plantation, and old Anne, the poultry woman and nurse at Snee Farm, be allowed to remain . . on the plantations where they now respectively are . . and I request my daughters, in consideration of the faithful services of the said slaves to me, that they will treat them with all the kindness consistent with their . . condition, and pay to each of them the sum of ten dollars annually during their several lives.' Of the 370 slaves owned by the testator at the time of his death, none is named in the will except the three mentioned . . who are severally denominated old, and recommended to the

special kindness of the two principal legatees. . . the six carpenters . . were as a corps separated from the laborers of the plantation and never engaged in agricultural operations, except for a short time upon some sudden emergency. In the winter, they worked at their trade at the various places of the testator, as the exigencies of these places required their peculiar service; and in the summer, they were usually let to hire in . . [245] Charleston. The testator mostly resided at Tibwin in the winter, and at Charleston in the summer. Tibwin was the original hive from which the other plantations were chiefly settled. An ' allowance ' list, and a ' working ' list, were kept by the overseer at Tibwin; and the carpenters were on the former list, but not on the latter; which, however, also omitted the names of such of the negroes as, from being superannuated or immature, were unfit for labor. But it appears that the carpenters drew their rations indifferently from the plantations of the testator, wherever they happened to be employed. The facts concerning the boat hands are of the same general character. They, too, were detached from the operations of Tibwin. Their ordinary employment was on board the sloop of the testator, in carrying to market the crops from his several plantations, . . and in carrying wood to the Ferry, . . [247] the master relies upon the fact, that the carpenters and boatmen had their patches and cabins at Tibwin. But this fact has little weight, when we remember that Tibwin was the original place of testator, and when we consider the intermixture of the families of slaves of neighboring plantations. If a negro who has a wife, and a cabin, and a patch on a plantation, is to be regarded as belonging to it, many slaves would be within the description who are owned by others than the proprietor of the plantation. . . [248] In our opinion, the carpenters and boat hands are bequeathed by the residuary clause of the will."

Grigsby v. Chappell, 5 Richardson 443, May 1852. " The negro was employed in Edgefield . . his mistress . . lived in Newberry. On Saturday evening, 1½ hours by sun, he left his employer to visit his home." " time of a great freshet . . A portion of the [toll-]bridge . . had been taken up . . to prevent it from being washed off. . . [444] witness told him he could not [cross], the river was high. The negro replied, there was a frolic in Newberry; he had swam the river before, and could do it again." He was drowned. " The negro was a carpenter, and very valuable." Held: the owner of the toll-bridge was not liable.

State v. Harlan, 5 Richardson 470, May 1852. Report of Judge O'Neall: [471] " The defendant whipped the slave [the property of another], giving him between two and three hundred stripes; '*he was whipped from the calves of his legs to his shoulders.*' He *had a pass.* The defendant . . found the slave in the road, near Churchill Gibbs' dwelling house, where he had a wife, and took him about four hundred yards, and inflicted the whipping. . . that the slave had gone to the house of a Mr. Fant, in his absence to Columbia, in the night time; that his wife . . had sent a white man . . to the kitchen, to order him (the slave) off. He accordingly obeyed, and went off hooping and hallooing, and calling his dogs. After bed time, he returned, stopped in the lane opposite to the

house, halloed, altered his voice, and pretended to be lost; enquired the way for Churchill Gibbs', which was in a short distance, and he knew the road perfectly well. This alarmed Mrs. Fant, and she ordered him off, and sent out George Tucker to send him off. He accordingly did so, and threatened to shoot him, and the negro left. Mrs. Fant told these circumstances to [her brother] the defendant; told him to whip the negro, and gave him the whip—'*a little India rubber whip.*' The negro's character as to honesty was proved not to be good; but he was uniformly pronounced to be a *submissive negro*. . . [472] The jury . . very properly convicted [1] the defendant." New trial refused.

State v. South, 5 Richardson 489, May 1852. See State *v.* Nathan, p. 428, *supra*. [409] "About 25th February, Nathan was, by the defendant, conveyed secretly out of the State: 26th, the magistrate granted a warrant against Nathan: after ineffectual search, a reward was offered for him, and this prosecution was commenced against the master. April 4th, Nathan was brought back, through the procurement of the defendant, by a person who got the reward. Nathan was afterwards tried, . . acquitted of the felony . . and punished for a misdemeanor of which he was convicted; afterwards tried for another felony, involved in the same transaction . . convicted and sentenced to capital punishment." "The defendant was indicted, under an Act of 1843,[2] . . [491] was found guilty." New trial refused. Judge O'Neall dissented.

State v. Holland, 5 Richardson 512, May 1852. [515] "Ingram, as executor, hired out and delivered the slaves, in December, 1849, each to a different person, for the year 1850," [513] "In the Summer of 1850, they each ranaway," [515] "and while they were in the woods, to wit, in December, 1850, [Ingram] hired them [out] again;" [513] "Some time after the second hiring, they were captured, or came in of their own accord." The defendant was tried and convicted of harboring the slaves.[3]

Atkinson v. Fraser, 5 Richardson 519, May 1852. [520] "The house . . was an old and valueless one, used as a negro crib,"

Douglass v. Price, 4 Rich. Eq. 322, May 1852. [326] "Jennet had a negro woman . . and two children, with which she became displeased, and directed Robert to sell them; and that Robert did sell them, and purchased for her a family . . Julia and her children."

Evans v. Evans, 4 Rich. Eq. 334, May 1852. [336] "the freeholders were called in [in 1830] by the executor, appraised the property, and threw it into lots. . . by some inadvertence a little female negro child, by the name of Sena, then of such tender age as to render it improper to take it from its mother, was put into one lot and its mother in another. The child had been valued at one hundred dollars. The lot, including the mother, was drawn by Sarah, (Mrs. Evans,) and that including the

[1] Act of 1841. 11 St. at L. of S. C. 155.
[2] 11 St. at L. of S. C. 257.
[3] Act of 1821. 7 St. at L. of S. C. 460.

child by Elizabeth, (Mrs. Haselden.) Evans and Haselden were present; and as soon as Haselden was informed . . that the child had fallen to him, disconnected from its mother, he remonstrated. . . He said that he would not take the child home; that if whoever drew the mother would take it at the appraisement, he might, and if he would not, he would give it to him. There was a general concurrence of . . every person present, that the child and mother should go together; and Mrs. Evans having drawn the mother, it was, at the executor's suggestion, and with the appraisers' approval, . . arranged that Evans should take the child along with its mother at its appraisement. He gave his note to Haselden for the amount."

Raines v. Woodward, 4 Rich. Eq. 399, May 1852. [401] "1847 or 1848, . . he was again sold out, except as to twelve or fourteen negroes, which he removed clandestinely from the State, leaving a large amount of executions unsatisfied."

Cummings v. Coleman, 7 Rich. Eq. 509, November 1852. [510] "at the administrators' sale of . . Boyd's estate, . . 1836, . . [his widow] having bid off three slaves, Nelson, Jim and Harriet, for the aggregate sum of eighteen hundred and sixty-four dollars, led the slaves into the house, where her children were, Nancy, then about two years old, . . and Priscilla, being about one month old, in witness's lap, and formally gave Nelson to Nancy, Jim to Priscilla, and Harriet to Nancy and Priscilla jointly."

Bradley v. Flewitt, 6 Richardson 69, November 1852. "an action of trespass . . to recover damages for shooting the plaintiff's slave, . . The plaintiff and his mother managed badly," She "was very eccentric, and the plaintiff still more so, if not actually deranged . . for three or four years, their negroes were continually running away and depredating on their neighbors' property. In the summer of 1849, Jack and two other young men, an elderly man, a woman and a girl . . were runaway. Together with another runaway man, who was intelligent and of very bad character, they made a camp in a swamp in the neighborhood of the defendants. The camp ground was a clearing in a very dense thicket, and was supposed to be about twelve or fifteen feet in diameter. From this hiding place the negroes killed the hogs and sheep and robbed the fields of the neighbors. The defendants formed a party to hunt and capture them. The defendants were armed with guns. . . The party surprised the gang in their camp. The negroes took to the thicket. They were ordered to stop, but did not. All of the defendants discharged their guns, without effect, except Flewitt, who shot Jack." Two doctors were sent for, but Jack died. [70] "William Flewitt had pursued Jack, some time before he was killed, and Jack making his escape, as he ran picked up a stick, and looking back, threatened to knock Flewitt's brains out. if Flewitt put hands on him. . . the plaintiff said he wished Flewitt had had a gun to shoot Jack. . . [72] The jury found a verdict for the defendants."

Watson v. Hamilton, 6 Richardson 75, November 1852. "action of trespass for killing a slave . . Defendant was the overseer of plaintiff . .

Hamilton . . sayeth [at the inquest], That on yesterday . . about 12 o'clock, he had some difficulty with a boy by the name of Lem, (a son of the wife of the deceased Bob) when weighing the cotton picked that morning, . . [76] Lem undertook to resist him and bit him on the hand; and while Bob . . and some others were together, and some twenty other hands . . were . . going back to the cotton-field, witness . . came up . . to them . . he overheard Bob say, 'That he wished it had been him, that Hamilton had whipped, instead of Lem—that if it had, he (Bob) would have beat him (witness) in that cotton until he could not have felt him.' Witness asked Bob who he was talking to. Bob replied, 'To you, sir.' Witness . . then stepped up towards Bob, to take hold of him, with the intention of whipping him. . . Bob then stepped off one side of the road, and stooped down (as witness thought) in search of something to fight with. Bob then turned and made at witness. . . witness drew his knife, and as soon as Bob got near to him, witness struck at Bob with his knife but missed him. Bob then stepped the other side of the road (as witness thought) in search of something to fight with, but apparently finding nothing, turned around and came at witness with his fist doubled; . . witness struck or stabbed him in the neck or shoulder with his knife. Bob then stopped and looked at him very stern, and cast his eyes around as if in search of something again to fight with, (as he thought.) Bob turned again and stepped towards witness a few steps. Witness then said to Bob he would be ready for him in a few minutes, . . and went to the house. . . when he got about two hundred yards from the place where this affair happened, he learned from the negroes, that Bob was down and like to die. Witness then sent immediately after Dr. Ready, but before Dr. Ready arrived, witness learned from the negroes that Bob was dead. Witness says that he had taken two or three drinks of spirits that morning, but that he was sober"

Held: [78] "If the verdict were to be rendered by the Court, it would probably be different from those which the jury have found. . . [82] After two verdicts against the plaintiff the Court will not send the case back for a third trial, when it is so palpable that nominal damages only will be the result." [Frost, J.]

Deloach v. Turner, 6 Richardson 117, January 1853. [119] "that the negro was an habitual runaway, and that the defendant had taken him . . to break him from running away. There was no evidence of any agreement to pay anything, and the proof was that he was so habituated to living in the woods, that his hire was not of much value. . . that no one could break him [of running away]: . . [defendant] wished to ship him but Deloach would not agree:"

White v. Arnold, 6 Richardson 138, January 1853. [142] "The defendant . . received two slaves of the plaintiff . . on a contract of hire, at the very low rate of $36 a year for both, and the consideration moving from Arnold was, that he was thoroughly to instruct the negroes in the business of a Blacksmith, during the term of five years as to one and seven years as to the other: that during those terms they were to be completely subject to him: that he was to feed, clothe and shoe them,

and to take such care of them as would be proper, under the circumstances: that in case of the sickness of either, he was to be sent, on such occasion and such only, to White, the owner and the plaintiff. The negroes ran away and were lodged in the workhouse as runaways. Arnold . . would not take them out, on account of the expenses to be paid [$41.87], though he was willing to receive them again, if White would pay the expenses, release and re-deliver them,"

Held: Arnold must pay the expenses of the slaves in the workhouse.

Rumph v. Rumph, 6 Richardson 151, January 1853. "The seventh clause directed the executor in case there should be any danger of the negro's being sold or destroyed by the husband of the legatee, to take him into his possession, and to pay over the income to her during her natural life, and then to her issue."

Horlbeck v. Erickson, 6 Richardson 154, January 1853. "Defendant had hired the negro [Andrew] at $15 per month, . . a good carpenter, worth from $900 to $1000," He and another negro went out in two boats to try to save some floating timbers belonging to defendant. He [155] "directed the negroes to come back, . . Near the boats of these two, some negroes were returning to Christ Church in a boat, . . and they took away from these two boys their oars. . . each drifted out with the ebb tide. . . One . . returned the next morning; the other [Andrew] . . has not [been] since seen." Verdict for defendant. New trial refused.

Verdier v. Trowell, 6 Richardson 166, January 1853. "action of assumpsit on the implied warranty of the soundness of a negro [sold in 1848 for $500.] . . The negro . . was a notorious runaway, and had just been taken out of the jail . . at the time of the sale. . . *Dr. Fishburne*—Examined the negro . . he had tumors on his back, . . the effect of burns. . . The tumors were so large that he could not lie down without difficulty. . . he had irons off [*sic*] his feet, and had been recently taken as a runaway. *Dr. North*— . . He had large fleshy excrescences on his back; . . incurable; they were the effect of previous burns. . . his value is impaired 75 per cent., and he would not have him at any price. *Josiah Beck* . . [167] saw what appeared to be shot holes healed up near the tumors. . . [Witness for defence testified,] Trowell . . got the negro . . from a broker [in 1847]. He gave for him a negro woman worth $500 and 25 or 50 dollars. The negro was stripped and examined. . . If he was not a runaway his value would be $800. . . [168] verdict for the plaintiff for one dollar," New trial granted.

Mikell v. Mikell, 5 Rich. Eq. 220, January 1853. Wardlaw, Ch.: [222] "It appears, by the evidence, that the defendant in the fall of 1837, was managing as administrator of his intestate, . . the Blue House plantation, in the interior of Edisto Island, . . and that he was then . . managing in his own right, a plantation on Bailey's Island, . . separated from Edisto Island by a creek about one hundred yards wide, but the landing on Bailey's Island is distant from Peter's Point, the opposite landing on Edisto Island, about four hundred yards. That the defendant having an unusually large blow of cotton on his plantation on

Bailey's Island, which might suffer from exposure, ordered four of the slaves, Jemmy, Class, Amy and Ket, under his control as administrator . . to proceed to Bailey's Island and aid in picking out his cotton; . . [they] remained on defendant's plantation for three days, . . On Thursday evening, in calm weather, the overseer of defendant, under his order, provided a large and safe boat for the transportation of the four slaves from Bailey's Island to Peter's Point, and saw the boatmen on board, and the four slaves proceeding towards the boat, but did not see them aboard the boat. Except the risk of being driven out to sea in boisterous weather, the passage across the creek is regarded as safe as transportation for equal distance on land, allowing for the difference between water and land. The passage is frequently made by children going to school, and by negroes going to church. . . yet, the three slaves last named, after they passed from the ken of the overseer, were never again seen in life by a competent witness, . . A few days afterwards, the dead body of Class was found on South Edisto beach, and . . the dead body of George, a slave of . . Mikell, sen., the owner of Peter's Point, and a small paddle boat upturned, belonging to Sampson, another slave of . . Mikell, sen. Early in the morning of Friday, . . [223] the overseer found the boat in which they were directed to be transported, at the landing in Bailey's Island, and the boatmen at their proper employment. Jemmy, one of the four slaves, returned to the Blue House plantation in proper time, and he is still alive. From all the circumstances of the case, I conclude that the four slaves were safely transported from Bailey's Island to Peter's Point, on Thursday evening, and that in an attempt, moved by their own will, to return in the night to Bailey's Island in a small boat, three of them were drowned. . . [226] as I conclude that the slaves were destroyed in prosecution of a wilful act on their part, after they had left the employment of the defendant, and after proper caution on his part, I concur with the Master, that no liability on this account attaches to the defendant." Affirmed.

Abrahams v. Cole, 5 Rich. Eq. 335, January 1853. In 1836 or 1837 " Cole removed, with the negroes . . to Alabama, where he died, . . 1841. The negroes . . were removed, shortly after his death, to Texas, . . [336] In September, 1848, the negroes were sent . . to South-Carolina, and they were hired out in Charleston "

Paslay v. Martin, 5 Rich. Eq. 351, January 1853. In 1837 Cook sold Randall and four other slaves to Gary. " At the same time an agreement in writing was made . . by which the negroes were hired to Cook at . . fifty dollars per month." In 1838 Gary sold them to Paslay, who sold them to Bird, for the use of Mrs. Cook, Paslay's sister. [352] " Randall was generally used as a cook at the Victoria Hotel, of which Cook was the keeper,"

Harley v. Platts, 6 Richardson 310, May 1853. [312] " Hester was a good field hand, 25 or 30 years of age, with one hand that had been burnt, when young, and consequently somewhat drawn, though this did not injure her as a field hand, as she was smart and active, ploughed,

hoed, etc., as hands usually, and was worth $400. George, her eldest child, was a very likely boy, 6 years old, . . worth $200, perhaps more. Benjamin, a likely boy two years old, and . . an infant, of fine healthy appearance. . . in 1851, . . the group . . well worth 700 or $800"

Owens v. Simpson, 5 Rich. Eq. 405, May 1853. The testatrix was, "at the time of her death, seventy-two years of age; had been, for many years, infirm, and was, latterly, in many respects, of weak mind. . . [407] possessed of a plantation and a few slaves [one man and four women], who, from indulgence, were of very little value to her. . . she was much attached to her negroes, and very indulgent to them, and, for some time prior to 1848, had not made a support; . . [408] 'the testatrix was greatly troubled and excited, when, . . 1848, the sheriff . . made a levy upon her land and negro woman, Lucinda.' . . when she saw that the property was about to be sold, and her cherished object, of keeping her negroes together until her death, defeated, testatrix . . proposed to defendant, that if he would assist her to keep her property together . . she would give him a thousand dollars, to be paid at her death, . . [409] [Witness] says the testatrix was 'old and childish. . . is convinced that the influence of her negroes prevented her from selling them;'"

Parris v. Cobb, 5 Rich. Eq. 450, May 1853. [455] "As to some of these negroes, . . six in number, the defendant admits, that, in 1848, he took them to Mississippi, and sold them in the aggregate for $3,000, or $3,050. . . The defendant was a young man, and . . [456] had previously been engaged in negro trading, (buying and selling slaves,) in which he had not been successful."

Williams v. Cochran, 7 Richardson 45, November 1853. "before the death of White he had been his agent to traffic in the purchase and sale of negroes, . . That after his death he continued the business for the widow, . . [46] [He] proceeded to Mississippi with a parcel of negroes," The contracts in this connection are given in notes to pages 47-50.

Lark v. Cunningham, 7 Richardson 57, November 1853. "The plaintiff was the son-in-law of defendant, . . Ben and some other slaves . . were sent [by Cunningham to Lark, in 1851.] . . Ben remained in the possession of the plaintiff until . . 1852—ranaway; soon after in possession of defendant, who . . refused to give him up, . . Ben was proved to be worth $1,000, and his annual hire about $100. . . [58] Lark . . fell out with the negro, and another . . [was] given in place; that Lark and Pitts came after the negro he first had, armed with guns. The negro was demanded [of Cunningham], and he told Lark he had better . . let the negro alone. The negro was seen ploughing in a cotton field; they broke for him, and he ran and escaped. They came back to the house; Lark demanded that he should give the negro up, and cursed him for a d—d abolitionist, and rode off."

Brandon v. Gowing, 6 Rich. Eq. 5, November 1853. "in . . 1843 and 1844, the debts were contracted to . . Sarah Rice, for the hire of her boy Eli, a shoe-maker, who worked in the shoe shop of . . Gowing, and whose earnings were applied in part towards the payment of the mortgage debt."

Mallet v. Smith, 6 Rich. Eq. 12, November 1853. Will of William Hacket, who died in 1850: "I will . . unto my . . brother, Hugh Hacket, if alive at my death, my negroes, Alsey, Mary, and her daughter Louisa, and Dick, in special charge and confidence, that as soon as may be practicable after my decease, he do erect a comfortable house for them to live in, upon the Chambers tract of land, . . [13] and that [he] permit Alsey, Mary, and her daughter and Dick, there to reside in the enjoyment of all the rents and profits of said last mentioned tract, without any person requiring or exacting any service or labor from either of the said Alsey, Mary or Louisa, and that they be supported . . on the said tract . . during their several lives, out of the interest of the sum of one thousand dollars hereby set apart to the said Hugh Hacket for that purpose, and hire of boy Dick to be applied to their common support." "Alsey, Mary and Louisa, constituted one family. Alsey is sixty-five or seventy years of age; her daughter Mary forty-five or fifty years, and Louisa, the child of Mary, and reputed child of testator, is a bright mulatto girl."

Held: the provisions for the slaves are void under the Act of 1841.[1]

Brown v. Wood, 6 Rich. Eq. 155, November 1853. [161] "February 4, 1850, . . [the sheriff] sold twenty-nine negroes, and on March 4, . . he sold eighteen more . . Among the negroes sold on February 4, . . were Sophy and Nanny, purchased by . . [162] Wood, for $770; and Charlotte, purchased by . . Ashley, for $675. . . Nanny . . is the child of Sophy. Charlotte . . is also"

Roberts v. Yates, 20 Fed. Cas. 937 (16 Law Rep. 49), 1853. [Charleston *Courier*:] "Reuben Roberts . . is a full-fledged negro, now about twenty-four years of age, although apparently much older. (It has been often remarked that negroes wear their age better in slavery than in any other state.[2]) He is a native of Nassau, in New Providence, an island of the Bahama group, and was lately a cook on board a British schooner, the *Clyde,* Capt. Bethel, which vessel arrived at this port from Baracoa on the 19th May, 1852. On that day the sheriff of Charleston district, as directed by the law,[3] boarded the vessel, arrested the cook Roberts, and confined him in jail, where he was detained until the vessel was ready for sea. . . eight days; and for this his suit was brought in the form of an action in trespass for assault, battery, and false imprisonment, the damages being laid at four thousand dollars. . . The points indicated as those chiefly relied on by the plaintiff are the commercial convention between Great Britain and the United States of the 3d July, 1810, the reciprocity act of congress of the 29th May, 1830,[4] and the proclamation of President Jackson, issued in conformity to the said act on the 5th October, 1830."[5] Attorney General Hayne, for the defense, cited South Carolina acts of 1794, 1800, 1801, 1802, 1803, 1820, 1822,

[1] 11 St. at L. of S. C. 154.
[2] Roberts was a free negro.
[3] Act of South Carolina, Dec. 19, 1835. 7 St. at L. of S. C. 470.
[4] 4 St. at L. 419.
[5] *Ibid.* 817.

1823, 1825, 1835.[1] "The defendant, in addition, refers for justification and authority to the act of congress of 28th February, 1803, concerning 'the importation of certain persons into certain states.'[2] . . Gilchrist, District Judge, . . considered the acts of the state, under which the defendant justified, as valid and constitutional, . . verdict for the defendant."

Wiley v. Lawson, 7 Richardson 152, January 1854. [153] "he about two years since ran off from . . Mississippi, over into Texas, certain negro slaves, with a view of defrauding his creditors,"

State v. Motley, 7 Richardson 327, January 1854. "indictment against . . Motley, . . Blackledge and . . Rowell, . . a negro man [22 years of age] . . was taken up as a runaway by one Grant, on July 4, 1853; that during that night, Rowell, in company with Blackledge, called upon Grant, who transferred the possession of the negro to Rowell, he undertaking to take charge of him until Grant could take him to jail . . The next day, . . the negro . . was seen in the possession of the three prisoners. They had a number of dogs with them. They called the negro Joe, and he answered to that name. They said they had whipped him because he would not tell his master's name; but he repeatedly said that he belonged to Manigault. Three witnesses testified to the cruel and barbarous treatment to which the negro was that day in their presence subjected by Motley and Blackledge—two of the witnesses thought that the treatment was sufficient itself to kill him; the third, that if sent to jail he must have died. A physician, who heard the evidence, testified that the negro would have died from the abuse he received, as detailed by the witnesses. . . Circumstances, given in evidence on the trial, led to the belief, that after the witnesses left, the negro escaped, or was permitted to fly by the prisoners, was pursued by them with their dogs, overtaken and killed not far from the place where last seen by the witnesses. . . [329] 'the negro was humble . . as a dog.'" Motley and Blackledge were found guilty of murder. [327] "Rowell's trial was continued to the next term, for want of time."

New trials refused: [336] "The extraordinary and dangerous agencies used in the original capture, the cruel and protracted abuse of the slave when in their power . . preclude all extenuation, sought to be inferred, in the absence of proof, because of an alleged attempt to escape. However such disclosures may awaken the bitter invective and calumny of ignorant and deluded opposers of our institutions, *such* means, for such an end, will never find vindication nor excuse among ourselves." [Whitner, J.]

State v. Posey, 7 Richardson 484, May 1854. "the prisoner was indicted . . for receiving stolen goods, . . [485] the prosecutor, was robbed . . of $1,022 or 32, in bank bills, by a negro woman, Jenny,[3] whom he had on hire. . . [also of] his purse, handkerchief, knife and gloves! . . Anderson, . . having . . Jenny in his possession temporarily,

[1] 7 St. at L. of S. C. 433, 436, 444, 447, 449, 459, 461, 463, 466, 470.
[2] St. at L. 205.
[3] Jenny and her husband, the slave of the prisoner's brother, were convicted of the larceny.

had his suspicions awakened about interviews between her and the prisoner. He directed her to meet the prisoner on the night . . in his . . [486] stable, or at its door. He secreted himself . . saw the prisoner approach . . his (the prisoner's) negro . . and another . . whom he took to be . . the husband of Jenny, were stationed apparently as watchers. . . The prisoner . . said to Jenny, 'Have you got any more money?' She said, . . 'a little.' . . told him 'she wanted the gloves, knife, handkerchief and purse, which she stole when she did the money.' . . [Some weeks later] the prisoner came near the stable; . . he hugged her; she broke loose and went towards the door, and said, 'there is nobody here.' He said, 'Jenny, if you trap me, I'll kill you.' . . The woman had some bills marked; some . . were received next day from the prisoner:" Posey was convicted. Motions in arrest, and for a new trial, dismissed.

State v. Kinman, 7 Richardson 497, May 1854. "The prisoner was indicted . . for stealing . . [498] Henry, . . property of . . Hunter; . . for aiding the said slave to run away . . Hunter . . July, 1852, . . missed the slave. . . the prisoner left Greenville in November, . . with two wagons . . for sale; one was a large . . [500] closely covered wagon," [498] "was in . . Montgomery, Alabama, . . December, 1852; . . had in his possession . . Henry, . . traded [the large wagon] . . for an old carriage . . [said] he could send it . . by . . Henry, to his plantation, . . spoke of . . Henry *as his own*. . . started . . Henry with it. That night the prisoner left Montgomery. The next day . . Henry was brought back" and put in the jail. He had a pass, in the handwriting of the prisoner: [504] "Permit this boy and carriag to pass Montgumray to Yeuton Green county the peapal will please let him hav Feed for himself and horses—he will pay for it." Hunter [498] "heard by letters . . that he was in Montgomery, . . sent an agent, who . . found . . Henry . . in jail . . sold him" and "brought to [Hunter] . . his price. . . [500] The carriage and horses . . were held by the person taking up the slave . . never claimed by the prisoner, . . [501] The jury found the prisoner guilty, but recommended him to mercy." New trial refused.

Morton v. Thompson, 6 Rich. Eq. 370, May 1854. Will of David Morton: "I desire that my negro property be appraised by disinterested persons, . . and I want Matilda and her children to be appraised together; and if any of the other girls should have any child or children before that time, that they be appraised in like manner. . . My two boys Wilson and Madison to have their freedom by paying the appraisement, and that my executors give them three years to pay it in. . . My negro woman Amy, I desire that she be free by getting a guardian. I do this for her kindness towards me during the affliction that it has pleased God to afflict me with; and that her youngest child, David, go with her. . . [371] I bequeath to Fairview Church one-third of my estate, after . . expenses are paid, . . [likewise] to the Domestic Missionary Society one-third . . to the Foreign Missionary Society one-third" The executors sold Wilson, Madison, Amy, and David, "having been advised that the

provisions of the will for . . [their] emancipation . . were illegal and void, . . The Ordinary . . decreed a distribution of the nett residue . . to Fairview Church, . . Domestic Missionary Society, . . Foreign Missionary Society" The heirs at law appealed.

Appeal dismissed: [376] "The case . . is an open, barefaced infraction of the Act of 1820, not falling within either of the specific provisions of the Act of 1841," "in [which] . . the law declares that the . . next of kin shall take." [Dargan, Ch.] The Chancellor gives [372] "a brief review of the action of our Legislature upon the subject of negro emancipation. A free African population is a curse to any country, . . and the evil is exactly proportionate to the number of such population. This race, however conducive they may be in a state of slavery, to the advance of civilization, (by the results of their valuable labors,) in a state of freedom, and in the midst of a civilized community, are a dead weight to the progress of improvement. With few exceptions they become drones and *lazaroni*—consumers, without being producers. . . governed mainly by the instincts of animal nature, they make no provision for the morrow, . . As an inevitable result, they become pilferers and maurauders, and corrupters of the slaves. Our early colonial legislation bears the impress of these great truths in the repeated enactments discouraging and restricting the emancipation of slaves. . . [373] The first legislation on this subject that I will notice, is the Act of 1800.[1] . . Act [of 1820 [2]] rendered every private emancipation a nullity. . . In this state of the law, there were not wanting attempts at evasions. Some . . were successful. I am constrained to say, (and I say it with all proper deference,) that, in my opinion, the Judiciary did not seem to realize the stern, but wise and necessary policy of the State, embodied in the Act of 1820. . . Should not all attempts at evasions of the law have been held ineffectual and void? . . Carmille *vs.* Carmille [3] . . [375] afforded a precedent, and a form by which the act of 1820 might be practically annulled and the policy of the State baffled. . . The case of Carmille *vs.* Carmille, and other cases occurring about the same time, gave rise to the Act of 1841. . . intended to remedy the deficiency of the Act of 1820, in carrying out the policy of the State, and to provide for cases, which, according to judicial construction, were not embraced in any previous legislation. . . While the Act of 1820 defeats and renders null any open and undisguised attempt at emancipation by the act of the owner, the Act of 1841 renders null and void any indirect attempt to accomplish that purpose, by secret trusts, and other means of evasion, which according to the decision of the Court, was not reached by the Act of 1820." Decree affirmed.

Peay v. McEwen, 8 Richardson 31, November 1854. "Defendant took from plaintiff's slave Jacob, a fifty dollar bank bill, supposing it to have been stolen. He advertised for the owner, but no one appeared, and after waiting over three years the plaintiff brought her action for the

[1] 7 St. at L. of S. C. 442, 443.
[2] *Ibid.* 459.
[3] P. 381, *supra.*

amount of the bill. The bill . . was claimed by Sarah, another slave of the plaintiff. Sarah, in consideration of washing, sewing, etc., done for Caesar, a slave of . . Starke, had received the bill from Caesar, just before the removal of his master to Florida. The bill had been placed in Jacob's possession by Sarah, to purchase some articles for her in Camden, where it was exhibited to the defendant, who detained it. . . His Honor decreed for the plaintiff fifty dollars."

Affirmed: [32] "If . . Sarah rightfully acquired the fifty dollar bill, it thereby became the property of her mistress, the plaintiff. . . the silence of . . Starke . . notwithstanding the advertisement, raises the implication of his assent"

Knight v. Knotts, 8 Richardson 35, November 1854. "The plaintiff alleged that the defendant had agreed not to employ, in certain ways, Tom, a slave of plaintiff's, which he hired for the year 1852 [for eighty dollars]; and that he did so employ Tom, whereby his death was caused. . . the jury . . found for the plaintiff eight hundred dollars."

Peeples v. Smith, 8 Richardson 90, November 1854. The testator, [91] "a very aged man, eighty-three or eighty-four years old . . [93] gave [his will] . . to Nance, his usual house-servant and favorite, and directed her to put it away. . . [Later] he wished the will . . to burn it; . . She said . . she had burnt it; he said that was a lie, he had given no such orders. . . he ordered her whipped. Mr. Young gave her a few stripes; . . [two days later] Dr. Harris severely whipped Nance to make her produce the will; she averred that she had burnt it." Two days after the testator's death it was found at the bottom of a trunk, "in the leg of an old sock."

Richardson v. Railroad Co., 8 Richardson 120, November 1854. A negro boy was killed by a train. "The boy was lying along side of the rail, and asleep on his face, though outside of the track, on the ends of the cross ties," Held: the defendants are not liable.

Yancey v. Stone, 7 Rich. Eq. 16, November 1854. "Judy is represented to be a good cook, brought up by Mrs. Earle, and belonging to a stock of which several members were given by Mrs. Earle in her lifetime to her children. . . [Witness] has heard Mrs. Earle, while chiding Judy, declare her wish that Yancey had the servant, and state that when he did get Judy, the servant would be made to know her place better. . . Mrs. E. stated that she intended a child, now dead, of Judy, for Betty Robinson. . . [17] it was only when provoked with Judy, that Mrs. E. proposed to send Judy to the plaintiffs [her daughter and husband], in Alabama, . . and that she had heard Mrs. E. express the purpose of giving the infant child of Judy (probably Noe,) to John Robinson."

Polock v. Dubose, 7 Rich. Eq. 20, November 1854. He had nine negroes [25] "of more than ordinary value; that he had mortgaged a part of them to carry a son through College,"

Sollee v. Croft, 7 Rich. Eq. 34, November 1854. [37] "that slaves had much depreciated in price since January, 1840, . . Croft had . .

purchased . . Frances and her infant child, for six hundred and fifty dollars, . . [47] Of the notes for negro hire, was . . one of six hundred dollars, for hire of shoemaker for three years." [37] "Croft brought back [from Alabama] to South Carolina, at an expense of three hundred and fourteen dollars and thirty-seven cents, all of these [twenty] slaves except Chaney, who died on the road. . . [48] The plaintiff, in her bill, strongly charges that the estate of the trustee should be made liable for the value of Chaney, . . alleging that this slave was removed prematurely after the birth of a child, against the advice of a physician, under circumstances of exposure, in very inclement weather. All the circumstances in this statement, inferring carelessness or inhumanity, are thoroughly disproved. This slave was not started for six weeks after her confinement, and then, with the approbation of a physician; she was carefully conveyed, in moderate weather, in a covered wagon; was rested on the road, and in every respect treated with care and kindness; and her child survived."

Gibbes v. Cobb, 7 Rich. Eq. 54, November 1854. [58] "The negroes purchased . . were taken from the State by Jesse Cobb and E. M. Cobb, in company with other slaves of the firm, and have been sold abroad by Jesse Cobb. . . Jesse Cobb swears that having bought on speculation, he sold the . . slaves [Jim, George, Sam, and Frances] . . at a profit of two hundred and twenty-five dollars."

Aldrich v. Kirkland, 8 Richardson 349, December 1854. [350] "Nimrod's value was shown to be four hundred dollars; he was killed by . . Kirkland, . . 1849."

City Council v. Gadsden, 8 Richardson 180, January 1855. Special verdict: "Gadsden . . is engaged in the purchase and sale of negroes. . . That . . Nachmann did place with [him] . . a negro for sale—the expenses of sheltering, clothing and feeding the said negro . . to be paid by . . Nachmann. . . Gadsden, at the time of the withdrawal of the . . negro, presented the following statement of expenses:

Advertising, ...	$4 90
Board 20 days, at 25 cents, ...	5 00
Commissions 2½ per cent. on $525, ...	13 12
	$23 02
Cryer's fee, ...	1 00
	$24 02

. . [181] We further find that the City Council of Charleston, by its ordinance, . . 1839, ordained, that 'it shall not be lawful . . to . . establish any building, lot or enclosure within the city as a . . place for the . . accommodation of the slaves of other parties, . . any person . . offending, shall for each slave so admitted . . forfeit . . five hundred dollars.'"

Held: [183] "there is not a solitary act . . found by the jury against the defendant, that can . . be construed into a violation of this ordinance."

Holmes v. Caldwell, 8 Richardson 247, January 1855. [249] "I sold to him four negro draymen,"

Tupper v. Fuller, 7 Rich. Eq. 170, January 1855. "settlement . . 1828, in contemplation of the marriage . . with Margaret L. Guerard, . . comprised the estate of the lady, consisting of landed property and one hundred and twenty-three slaves"

Drayton v. Rose, 7 Rich. Eq. 328, January 1855. Will of Dr. Philip Tidyman, dated 1843: [329] "I . . bequeath, unto my . . daughter, . . all the house-servants usually employed by me in town and country for domestic comfort; . . [330] I order . . my executors to keep my whole estate together, during the life time of my . . daughter; to have my plantations cultivated by my slaves, as they now are; . . After the death of my . . daughter, I . . bequeath, to . . my cousin, James Rose, and his wife, . . or the survivor of them, my house servants, Nancy, Lucretia, Jenny and Judy, with my earnest request to protect and treat them with kindness; . . [331] After the death of my . . daughter, I order . . the remainder of my slaves to be divided in families, by my executors into seven equal parts or shares, one-seventh part whereof I . . bequeath" to a nephew and to each of six nieces. Codicil, 1850: [332] "since the date of my will . . Judy has had a child. I now, therefore, . . bequeath the present and future . . increase of . . Judy, to . . James Rose and his wife, . . or the survivor of them, in the same manner as I have heretofore given Judy to them."

Shands v. Rogers, 7 Rich. Eq. 422, May 1855. Will, executed 1823: "I allow my . . wife six negroes . . and at the expiration of her widowhood, the above negroes are to go to my four youngest sons: . . and as for Tena and Betty, they are to be sold and equally divided between my four named sons,"

Whitesides v. Poole, 9 Richardson 68, November 1855. "Mrs. Dunkin took with her Lucy, a girl born the plaintiff's. Lucy ran away and returned to the plaintiff's. Prudence . . [69] went . . in Lucy's place,"

Ex parte Bradley, 9 Richardson 95, November 1855. "Certain slaves of the relators were prosecuted by . . Caraway, and found guilty by a magistrate and freeholders, of harboring three runaway slaves in the employment of the prosecutor. The witnesses upon the part of the prosecution were the three slaves who had been harbored. They all testified, that when first taken up, they were interrogated by Caraway, and said that they had subsisted upon what they could get in the woods; that they were whipped, and thereupon they told the tale, in reference to the harboring, which they now told in Court; and one of them further testified, that Caraway said to him, 'if he did not tell the same tale to the Court, he,' Caraway, 'would whip him again.' . . For the defence a witness was offered to prove, that on some previous occasion Caraway had

said, 'that no negro under his control should tell anything against him.' . . excluded. A writ of prohibition . . [96] granted" Reversed.

State v. Bradley, 9 Richardson 168, November 1855. Indictment "for the murder of a negro boy . . between six and eight years of age, the property of the prisoner." The jury found the prisoner guilty. New trial refused.

Reeves v. Gantt, 8 Rich. Eq. 13, November 1855. Johnston, Ch.: "Trussell . . was always very indulgent to his slaves [among them [15] 'a deaf and dumb boy']. After having become enfeebled by age and infirmity, he allowed them to do pretty much as they pleased. He gave them many liberties, allowed them to take up goods, liquor, groceries, etc., both for use and sale; and the consequence was, as uniform experience proves in every like case, they idled away their time, dressed extravagantly, and laid the sure foundation of their master's ruin, and of their own sale into other hands. . . [18] Trussell's case was peculiar: he never had any family, or domestic companions, but these slaves. His increasing age served but to render them more necessary to his happiness. . . He loved them; and the only aim of his remaining years was to make them happy, and to place them in the hands of some one likely to prove a kind master to them after he was gone. He declared . . that Gantt had been kind to him, and he owed him a good deal, and not wishing to separate his negroes, he intended to let him have them. Gantt was represented to be very indulgent to slaves."

Gadsden v. Raysor, 9 Richardson 276, January 1856. The slave died a few weeks after the purchase, though warranted by defendant sound in all respects. "A post-mortem examination . . [disclosed] chronic affections of the liver, . . [277] one [witness] had him employed in helping him to roll logs, within two months before he was sold, . . [278] never complained, . . [The presiding judge told the jury,] I thought, if a disease of any sort was easily removed, and by neglect or maltreatment it was allowed to prove fatal, this should not be accounted unsoundness . . verdict for the defendant."

Campbell v. Kinlock, 9 Richardson 300, January 1856. Certificate: [302] "Joe is an excellent bread and cake baker; he has been brought up to the business from a boy; he has not been out of the Miller family. Mrs. Miller is now out of the business, and sells him to change the investment. Lowest cash price, $800." On the faith of this paper, Joe was sold to plaintiff, in March 1851, for $775. [304] "In two or three weeks . . [he had a] hemorrhage. [In May he was attended by two physicians.] . . bought by . . Hogan [in June]. . . [305] gave $60; . . sold him . . [to R. S. Miller, who] . . [306] bought him from sympathy; he died . . [ten days] afterwards." "In 1851 negroes were high; Joe, if sound, would have been worth $1500." [305] "negroes employed in [a bakery] . . are mostly in the bake-house; let them off on Saturday night; . . wages of a good cake baker should be about $20 per month. . . [306] negroes work day and night at this business."

Escheator v. Dangerfield, 8 Rich. Eq. 95, January 1856. See State *v.* Singletary, p. 367, *supra*; and Rhame *v.* Ferguson, p. 371, *supra.* [98] "That . . Dangerfield sold . . three of the testator's children which had been devised to him in trust aforesaid, . . [for] between nine hundred and one thousand dollars, and applied the same to his own use, . . [On Dangerfield's death, his administrator took] possession of the stock of cattle . . and would also have taken possession of the slaves . . but . . [they] have been seized as slaves illegally emancipated, and are held by Dr. Theodore Gaillard as his property under the Act of 1800."

Held: [100] "Dangerfield must be held to have taken no beneficial interest in this bequest. . . [103] The trust . . is illegal, . . decreed that [the administrator] . . account . . for the sales of . . slaves" [111] "deliver up such of the slaves as he had in possession . . or . . may hereafter get possession of; and that an unconditional delivery by Gaillard to the plaintiff shall be equivalent to a delivery by the defendant." [110] "As there were no next of kin, the State succeeded to their rights."

Rumph, Guardian, v. Waring, 8 Rich. Eq. 136, January 1856. Will of Isaac Perry, who died in 1818, "that my two mulatto boys, . . Harry and Richard, should be free, and . . I hereby specially impower by this deed or will, my executors . . to manumit, . . by a due course of law, the above two named mulatto boys," Josiah Perry, a son, alone qualified as executor. "Col. Richard Perry . . cousin of Josiah . . [testified] that in 1820, . . [he,] with [five] others, was summoned by . . a Justice . . examined . . Harry and Richard, (the former . . then about seven or eight years of age,) . . signed the certificate required by law[1] . . [138] 'that they were of good character, and capable of gaining a livelihood by honest means.'" [136] "that Josiah . . executed a deed, emancipating the . . boys, . . that on the same occasion the witness emancipated two of his own slaves, Mary and Selina; . . [137] and that the certificate and deeds were placed in the register's hands, to be recorded, who gave a receipt . . produced, . . 'Received of Richard Perry and Josiah Perry, two instruments of emancipation, setting free . . Mary, and her child, . . also . . Richard and Harry.' . . that a short time after . . he heard that the papers had been lost; . . then procured another certificate, signed by the same parties, except [one] . . who had died . . lodged [it] with the register, and took his receipt . . 'that his object was to ask the assistance of equity to correct the mishap' . . [138] an amicable proceeding, . . 1824, Chancellor Gaillard . . decreed that [he] . . should execute another deed to take effect as of the date of the original deed of emancipation [of Mary and Selina]. . . The [second] certificate of the freeholders [in relation to Harry and Richard] produced . . bears date April . . 1821; . . [139] Then follows, on the same sheet of paper, the certificate of the magistrate [dated July 1821]: 'This is to certify that the . . certificate and deed of emancipation were duly executed before me, . . November, 1820; and . . Richard and Harry, were legally emancipated'" Till the death of the executor, in 1824, "Harry resided either with his aunt, a colored woman . . belonging to

[1] Act of 1800. 7 St. at L. of S. C. 443.

. . Brownlee, or with the executor, . . Some time after . . Waring [son-in-law] . . of Isaac Perry, . . sent for Harry, who continued to reside with him until his death, in . . 1852. . . In May, 1853, Harry left . . [the] possession [of defendant, Waring's second wife and administratrix], . . was taken by her directions in July . . he having in the meantime, through his guardian [Rumph], by letters of June, 1853, insisted on his right to freedom. The defendant pleads in bar . . [140] that the possession of Harry as a slave . . for such a length of time, extinguished his claim, if he ever had any, to freedom, . . the testimony of Col. . . Perry is, that . . Waring . . was aware of Harry's being set free by the deed, which deed he knew was lost; . . a son of Isaac Perry . . [proved] that Harry was always regarded as free by every one." Chancellor Dunkin, in February 1855, [143] "decreed that the bill be dismissed, but without prejudice, and without costs." "the Court of Common Pleas is the appropriate forum"

Affirmed: [144] "This Court is entirely satisfied with the proof of the freedom of the persons in whose behalf this suit is brought; but is compelled reluctantly to deny the relief sought for want of jurisdiction."

James v. Railroad Co., 9 Richardson 416, May 1856. "When Edmund [a slave] was about five or six years old, a son of Dinkins, a few years younger, was left for a month in charge of his aunt, . . and when she brought him home to Dinkins, she brought with him Edmund, as a nurse and playmate, and returned, leaving both Dinkins' son and Edmund. . . [417] In 1854, Dinkins was stationary agent of the defendants . . put Edmund on the road, as one of the firemen, taking the wages to himself. . . run over so that he died . . How he fell no white person could testify. . . [418] The jury found for the defendants."

State v. Gossett, 9 Richardson 428, May 1856. The prisoner was indicted [1] for stealing a slave, and aiding him to depart from his master's service. [429] "He confessed that he had sold Shannon's negro to Scott, in Georgia, for five hundred dollars and a creature [a mare]—that he gave two hundred and sixty-five dollars to the man who got him to carry the negro away, and who informed him that the negro had run away for some time, and his owner believed he was drowned—that the negro came to him in the road near to his house, and that he started with him about daylight." Found guilty.

State v. Chaney, 9 Richardson 438, May 1856. "indicted under the Act of 1754, for inveigling, stealing and carrying away a slave" Found guilty.

O'Neall v. Railroad Co., 9 Richardson 465, May 1856. Report of the presiding judge: "The three slaves were all children of the same mulatto mother by white fathers. The oldest, Andrew, was darkest and had black eyes; he was a bricklayer and plasterer; the other two, George and James, reputed to be the children of a former owner, had blue eyes, [[467] straight hair,] and were very light colored, although

[1] Act of 1754.

in them the African taint was plainly visible. George was a barber and James a house painter. All were musicians, young, very likely and smart, and either of them might have been sold for one thousand five hundred dollars. . . W., the former owner, . . had bought the mother and her first child. . . [467] had treated these boys with great indulgence, perhaps never deriving any profit from them, but sometimes placing them, or Andrew particularly, under the supervision of a marshal, who had once or twice flogged him for making no wages; that they had always lived in houses hired by themselves;" After W.'s death [465] "his executors, in . . 1851, sold the mother and her three sons to P., for three thousand dollars, on condition that they should not be sent out of the State, and if practicable should be kept together. . . [466] 1852, P. not finding them profitable, conveyed them, on like conditions, to the plaintiffs for three thousand six hundred dollars, of which the slaves themselves paid six hundred dollars. The plaintiff O'Neall . . let the three boys hire their own time, and control their own motions and contracts. In 1853, he exacted no wages from them. In 1854, they paid him about four hundred dollars under an arrangement between him and them that they should pay to him a fixed sum, keeping for themselves the surplus of their earnings. In the latter part of 1854, O'Neall failed in his business . . [Soon after] the three boys disappeared from Columbia, and have never been seen here since." They were seen "standing on the platform at Kingsville near the track of the South Carolina Railroad" and later "in the boat which carries the railroad passengers across the Cape Fear River. . . [467] the plaintiff advertised them as runaways and offered a reward of three hundred dollars for their apprehension, . . that P. whilst he owned them had given to each a monthly pass for the town, but prohibited their going out of town without his special permission, and had never superintended their labor further than to require from each the payment of a fixed sum per month; that . . O'Neall, treating them as before-mentioned, kept with them an account in his books . . that they dressed well, except Andrew, when at work; that they belonged to the bands of volunteer companies, and wore on parade the uniforms of those companies; that Andrew went with a troop of cavalry to Camden, and all of them, whilst P. owned them, frequently went into the country as musicians, by his permission; . . that some persons did not know that they were slaves, . . [468] and that some other slaves in Columbia were permitted to enjoy as large liberties as they did. . . [469] The jury found for the plaintiff one thousand five hundred dollars, which I suppose was meant as the value of Andrew only,"

New trial refused: [472] "The jury may have reached the conclusion *justly* from the proof, that the appearance of two was well calculated to deceive the vigilant, and that negligence on the part of the Company could not be inferred." [Whitner, J.]

Beckman v. De Saussure, 9 Richardson 531, May 1856. General William R. Davie left by his will, dated 1819, sixty-five negroes, to three of whom he bequeathed the sum of ten dollars each.

Britton v. Lewis, 8 Rich. Eq. 271, May 1856. [274] "The three negroes . . not . . sold by the executor . . were of no value, and were

offered for sale without a bid. Two of them, Nancy and Hardtimes, were superannuated, and Ben, though not old, was palsied and worth nothing. They are dead now; or if living would be a charge upon their owner."

Sims v. McLure, 8 Rich. Eq. 286, May 1856. "By an inquisition . . it was found that . . Sims 'is of unsound mind, and has been so from his infancy,' . . [287] he was entitled by succession to seventeen negroes and several thousand dollars; and . . on his coming of age in 1850, this property was put into his unrestricted possession by his guardian, . . [289] Of the seventeen slaves . . five were accidentally burned to death, three remain in his possession, and three were sold to his father-in-law" Two of the others were sold to Hunter, two to Wilkins, one to McLure and Wilson, and one to Savage.

U. S. v. the Thomas Swan, 28 Fed. Cas. 86 (19 Law Rep. 201), July 1856. "The steamer *Thomas Swan*, in . . 1855, made a voyage from the port of Baltimore to the port of Charleston, having on board . . seven negroes belonging to Thomas Petigru. . . The libel charges that the steamer . . has incurred the penalty provided in the act of congress, of 1852,[1] because of the absence of the several provisions for the security of passengers, . . [89] decreed, that the respondents pay to the libellants the penalty of five hundred dollars, . . with the costs": [88] "although the negro is regarded, in law, as but a chattel, yet the discrimination recognized by the same law, between the negro and any other chattel, is sufficient to bring him within the definition of a passenger." [Magrath, J.]

Smith v. Hamilton, 10 Richardson 44, November 1856. Action of slander against Hamilton for saying that plaintiff, a white woman, had a mulatto child. "The jury found for the plaintiff a verdict for $3000."

Pringle v. Rhame, 10 Richardson 72, November 1856. "The plaintiff lives in Florida and has removed all his negroes there, except Flander, who was left because his wife and family are here."

Welch v. Brooks, 10 Richardson 123, November 1856. "assumpsit on a promissory note . . for three hundred and forty dollars, . . Brooks, bought . . Cato [from the plaintiff in 1854.] . . the plaintiff . . warranted . . the soundness, 'except an affection of the jaw.'" Within a few weeks Cato died of apoplexy. [124] "the complaints of Cato of pain in his breast and head, made to witness for several years before his death," were admitted in evidence. [126] "no physician was called to treat the negro before his death. . . [127] no evidence, . . that the symptoms had become so aggravated that a prudent and humane owner would not have omitted the discharge of a duty incumbent upon all." The jury found for the defendants. New trial refused.

State v. Kennerly, 10 Richardson 152, November 1856. "The defendant was indicted for perjury . . assigned upon evidence given by [him] . . before a Court of Magistrate and Freeholders on the trial of . . [his] slaves, . . charged with larceny and with the receiving of stolen

[1] 10 St. at L. 62.

goods. The negroes were arrested on Saturday, of which the defendant was informed, and of the nature of the charge; and on the same day he and Louisa, one of the negroes, were seen together between the brick yard and Columbia. On the trial, the defendant swore, . . [153] He 'searched Louisa—her pockets, etc., but did not strip her. . . He thought he made search on Monday [as he] . . Did not go down . . Sunday,' . . directly contrary to the evidence given by him . . before the Court of Magistrate and Freeholders." Held: [154] "the matter falsely sworn to . . must be material to the question depending."

Jolliffe v. Fanning, 10 Richardson 186, November 1856. Elijah Willis, by his will, dated 1854, bequeathed Amy (his slave mistress), her seven children (some of whom were his own), and their descendants to his executors, directing them [188n.] "to bring or cause said persons, and their increase, to be brought to . . Ohio, and to emancipate and set them free" He also bequeathed and devised to his executors all the rest of his property, from the sale of which to purchase lands in one of the free states for said slaves, to stock and furnish the same, and to place said persons in possession thereof. [186] "Elijah Willis, taking with him his negro slave, Amy, and her children, and her mother, in May, 1855, left his home [in South Carolina] . . for Cincinnati, . . He arrived in a steamboat, and leaving it at a landing, on the Ohio side . . [187] he died between the landing and a hack, in which he was about proceeding, with his said negroes, to his lodgings." His heirs-at-law contended that the will was void under the act of 1841, and also [191] "undertook to show insanity, fraud, and undue influence, by proving . . that the deceased was often under gloomy depression of spirits—avoiding society on account of his connection with Amy, by whom he had several children; that he permitted her to act as the mistress of his house; to use saucy and improper language; that she was drunken, and probably unfaithful to him; and that she exercised great influence over him in reference to his domestic affairs, and in taking slaves from his business, to make wheels for little wagons for his mulatto children, and in inducing him to take off for sale the negro man who was her husband. . . [He] complained of being charged one hundred dollars by a physician in Wilmington, for attendance on one of these slaves." Contrary to the instructions of the judge, the jury found against the will.

Verdict against the will set aside, and new trial ordered: [200] "the disgust which is properly felt at the course of conduct which supplied the motive to make such provisions . . in favor of such beneficiaries, [can not] be permitted to blind us to the fact, that such motives and such provisions and such objects of bounty were perfectly consistent with the unconstrained pleasure and natural sentiments of such a man as Elijah Willis was." [Withers, J.] See Willis *v.* Jolliffe, p. 469, *infra.*

Burton v. Yeldell, 9 Rich. Eq. 9, November 1856. Will, 1854: [10] "I . . direct that my executors do sell the whole of my estate both real and personal" A bill "was filed by the beneficiaries under the will . . [11] asking the Court for a specific settlement of the property named in

the will, upon the same trusts and limitations as expressed therein relative to the proceeds of the sale of the said property. It was urged by the complainants, that the slaves of the testator came to him from the family of his wife—are all of kin to each other, being chiefly the offspring of a single family—and are unusually valuable and likely, of excellent character and rapid increase, and would unquestionably yield a larger estate for transmission to the infant remainder-men, than would the fund arising from the proceeds of the sale of said estate though managed with the utmost prudence. . . The executors in their answer, . . [12] deny that the said negro slaves are of rapid increase, since . . the fifteen or sixteen negroes of which the testator died possessed, were the accumulation of some twenty-five or thirty years, and there are but few children now among them. . . [14] bill . . dismissed."

Affirmed: [17] "The increase in the entire slave population of South Carolina from 1840 to 1850 was less than eighteen per cent. for the ten years, which would be an average of less than two per cent. per annum. It may be said, *that* increase was less in consequence of emigration. But, during the same period, the increase of the slave population in the whole United States was not quite twenty-nine per cent. for the decade, or about three per cent. per annum." [Dunkin, Ch.]

State, ex rel. Mordecai, v. City Council, 10 Richardson 240, January 1857. "The Relators are brokers, . . doing business in Charleston. The slaves supposed to be liable to the tax [of ten dollars per head [1]] . . are from parts beyond the limits of this State, and are in their hands . . for sale. . . [241] [one] relator . . has been assessed nine hundred and thirty-five dollars,"

Held: I. the tax is not [245] "forbidden by the Constitution of the United States, . . clause 5, sec. 9, art. 1, . . [II.] [246] The second clause of sec. 10, art. 1, . . would seem to have a more plausible application . . two objections . . [247] the slaves brought from Virginia are not 'imports' in the sense of the Constitution. . . if they were, the tax . . is not a tax on an 'import;' for the ordinance . . interposes no obstruction to an importation . . but it levies a contribution . . after they are imported," [Withers, J.]

State v. Winningham, 10 Richardson 257, January 1857. "The prisoners, with four other persons, . . were indicted for the murder of a slave, . . James, . . [259] The proof was clear, that thirteen oxen belonging to Col. Morris, were stolen from his cattle-pen. . . In the pen was the house of the cattle-minder, James, an exceedingly vigilant and faithful negro. . . [Miller confessed] [260] that Winningham and Sancho [a slave belonging to Elliott] had been twice to the pen to get the cattle—that the negro was too watchful—that they determined to kill the negro . . [Bowman said] [261] Winningham . . knocked him down, . . Miller cut his throat, and Sancho carried him out: . . Winningham stated that . . Sancho said he had killed him. . . [262] The jury . . convicted . . Miller and . . Winningham."

[1] City ordinance of May 21, 1855.

New trial granted [269] "to Winningham as a matter of strict, technical right, and . . to Miller, *ex gratia.*" Judge O'Neall dissented: [270] "when they stand before me plainly guilty of the most atrocious murder, ever committed in the State, I should feel . . derelict in my duty if I did not hold them to a strict observance of law."

Vose, administrator of Dangerfield, v. Hannahan, 10 Richardson 465, January 1857. "trover to recover damages for the conversion of . . Eve and her eight children and two grandchildren. . . [466] The defendant claimed them by virtue of a deed from the intestate, executed . . 1852, . . a few days before his death. . . Neither the defendant nor intestate expressed an intention to make the slaves nominally free. Intestate said to . . Johnson, that he wished to make his children (Eve's issue,) free, and desired defendant to act for him. . . The plaintiff resisted the deed on the ground, that there was a secret trust . . verdict for the plaintiff, for the value of the negroes."

New trial granted: [472] "it is without precedent to sustain the attempt now made by an administrator to dispute the gift of his intestate. . . The Act of 1841 . . third section . . plainly show [*sic*] that none save the 'distributees or next of kin' were intended to divest the legal estate," [O'Neall, J.]

Noble v. Burnett, 10 Richardson 505, January 1857. The testator bequeathed to his wife "his good and aged servant Doll, and all her descendants, with the husbands of her daughters;"

Huger v. Huger, 9 Rich. Eq. 217, January 1857. In 1856 the Savannah River plantation of the testator, Daniel Elliott Huger, [218] "with all the negroes thereon (one hundred and forty-two in number), stock, and other . . personal estate, belonging to the premises, including seed rice, not exceeding four thousand bushels, were sold as a whole for . . one hundred and eighty-eight thousand dollars. . . [219] [to] Izard, . . whose wife is one of the devisees . . he being . . the only bidder." Chancellor Dargan decreed [232] "that the . . sale be confirmed," "The average price at which the one hundred and forty-two negroes sold, considering the appraised value of the land to have been given, was about five hundred and fourteen dollars. There was evidence that, about that time, gangs of negroes, without being sold with land, had brought an average price as high as six hundred and nineteen dollars. It is perfectly obvious, that negroes sold without being encumbered with land would yield a higher average price than where . . the sale of the negroes was coupled with the sale of land to the amount of one hundred and thirteen thousand dollars."

Affirmed: [237] "It is said, that the sale ought to be set aside, because . . [238] one of the parties in interest . . was excluded from competition at the sale by an odious condition. To understand this objection, an explanation is necessary. The testator had a faithful and favorite slave named Jackey, who was a kind of steward, kept the keys, etc., and was eminently trustworthy. Him the executors [the four sons of Huger] wished to favor, and accorded to him the privilege of '*choos-*

ing his master;' in other words, of electing the person to whom he should be sold. And when the plantation, negroes, etc., were put up for sale *in solido*, one of the conditions was, that Jackey, with his family, should have the privilege of going with the gang to the purchaser, or of being detached from the purchase; deducting from the bid for the whole the appraised value of Jackey and his family." [222] "This was the source of much of that excitement and intensity of feeling which have pervaded these proceedings. The arrangements that were made on this subject were clearly within the discretion and competency of the executors." [Dargan, Ch.]

Monk v. Pinckney, 9 Rich. Eq. 279, May 1857. Johnston, Ch.: "This is a bill brought by colored persons formerly slaves of the late James W. Monk, against the executrix of Dr. Cotesworth Pinckney, to enforce a trust undertaken by him for their benefit. . . 1830, James W. Monk, duly executed a deed, by which, reserving a life estate to himself, he conveyed to Dr. Pinckney . . [280] Bella, (the plaintiff Isabella,) and her children then born, Margaret, Elizabeth and Anna, and also two other slaves, Sophia and Billy, *in trust*, that Dr. Pinckney on the death of Monk, should, at his own . . expense, convey . . Bella and her children, and all her and their increase and issue, existing at Monk's death, out of this State, to whatever place they might select within the Atlantic States, and then and there make them 'absolutely free' . . 1832, . . shortly before his death, Monk made his will; by which he appointed Dr. Pinckney his sole executor and legatee, and . . declared the legacies thus given to be *upon trust*, 'to afford to . . Bella, already conveyed by me under certain trusts to the said Dr. Cotesworth Pinckney, a decent support during her life, and also to educate and support such children as she may have living at the time of my death; and after the death of . . Bella, then in trust to support . . every one of the said children until they shall severally come to the age of twenty-one years; when an equal . . portion of the said property, both real and personal, shall be assigned . . to each of the said children, as they shall severally come to the said age, to be theirs in fee simple forever, free of any trust or charge whatever.' Bella and her children have been in Connecticut . . many years, and some, if not all, of her daughters, have married white men there. . . [281] 1845, Dr. Pinckney filed . . petition, . . prays leave to remit the nett balance of the estate to Bella and her children for their maintenance . . and that he be discharged of his trust. Of course the petition was dismissed. . . Mr. Burbidge . . testifies, that on two occasions, from 1838 to 1840, he carried about two hundred dollars to Bella from Dr. Pinckney. Dr. Pinckney died in 1847, and the defendant is sued as his executrix."

Decreed: that the defendant pay to Isabella Monk interest on the capital (eight hundred and eleven dollars and seven cents), from 1838 (when Monk's estate was sold), during the life of Isabella, and upon her death distribute the capital equally among her children who were living at the death of Monk.

Moore v. Hood, Guardian, 9 Rich. Eq. 311, May 1857. Will, 1840: "Daphna, and her increase, to go to said Sophia's children at her death." The guardian of the children, after their mother's death in 1841, [312] "took possession of . . Daphna, and hired her out for the years 1842, 1843, 1844, and 1845, inclusive. In that time she had five children, three of whom had died; at the October term, 1845, of the Court for said county, he applied for a sale of Daphna and her two surviving children . . stating that 'it is difficult to hire at any profit but have been an expense to the owners;' . . An order of sale was made . . [313] [and] the sale was reported to have been made . . December, 1845, viz:

Daphna and her infant child for, . . $350 00

Hannah, a small girl child, (child of Daphna) . . 160 00"

Wardlaw, Ch.: [315] "it was a most unfortunate and injudicious sale for the wards of the guardian. It occurred at a time when property was extremely low, . . the aggregate sales of Daphna and . . children did not near equal the valuation placed on Daphna alone in 1840 by the testator, . . [but] The authority to sell emanated from a Court of competent jurisdiction. It was made . . at public outcry after four weeks' notice, at a public place, and for the highest bid that could be had, when several were bidders. The negroes were bought by a speculabor in that kind of property, there being three of that class of persons at the sale. The conduct of the defendant . . was fair; for . . the auctioneer, states that the woman and infant were sold together, and the oldest girl by itself, and some persons thought they ought not to be separated; the guardian replied, 'he must sell so as to git the most.' . . [316] in the opinion of . . the auctioneer, [and two others, $510] . . was their value. . . the woman had bad teeth, feet cracked-open, frost bitten, sleepy and sluggish; the infant sickly, and looked as if it could not live. . . [Others] testify to none of these unsaleable qualities, in their opinion they were worth, . . from one thousand dollars to eleven hundred dollars. The complainants . . were present at the sale, and . . forbid it, because they were unwilling that the negroes should be sold, and because they thought the guardian had no legal authority to sell. I have no doubt this contributed in some degree to chill the bidding and injure the sale," [320] "I think . . that the guardian must be held to have taken the risk on himself that the slaves would bring a full price under the circumstances of sale, and that he is accountable for their full value. The negroes were sold to a negro trader, and have been eloigned, so that it is now impossible for the plaintiffs to pursue the property itself."

Mosely v. Crocket, 9 Rich. Eq. 339, May 1857. [342] "1846, the plaintiff executed . . a bill of sale for five negroes, viz: Nelly and her four children, . . in consideration of . . fifteen hundred dollars."

Henry v. Graham, 9 Rich. Eq. 346, May 1857. "It was proposed to charge the administrator with the value of . . Guinea Jack, appraised at six hundred dollars, and Tinker Jack, appraised at eight hundred dollars, . . In 1855 the administrator hired these negroes to the . . Railroad as track hands, and . . they were both killed. Guinea Jack, it is supposed,

placed himself in the rear of the mail car, without the knowledge of the conductor, and in jumping off, while the train was in motion, fractured his skull; . . Tinker Jack was probably run over while asleep on the track; . . [347] The usual employment of track hands is to remove obstructions, raise up the cross ties, straighten track, spike down track, and clear out the ditches. They do not go upon the train, except upon some exigency, such as an accident. . . when they are transported to the scene of the disaster under the care of an overseer. They are also, when allowed to visit their wives, carried on the train, but on such occasions a ticket is required from the overseer. . . [348] Many witnesses . . were of the opinion that there was greater risk in hiring negroes to the railroad than on a plantation, . . one or two . . expressed a preference for the railroad, and thought the negroes better treated, and the danger equal. . . testified . . by several . . employed on the railroad, that of the one hundred and thirty track hands . . these were the only instances that they had heard of any being killed." Held: the administrator is not liable.

Crouch v. Culbreath, 11 Richardson 9, November 1857. "1856, the defendant [E. Culbreath] sold to the plaintiffs [Crouch and H. C. Culbreath] a young negro man named Vincent, for one thousand and sixty dollars, . . 'I warrant . . sound in body and mind.' . . after the sale . . [two physicians were] called to examine [him] . . [11] concurred . . that Vincent had had chronic rheumatism many years, . . old Isaac, . . the reputed father of Vincent, . . [12] had scrofula, . . Crouch was then making preparations to start westward with negroes—Vincent said he was mighty willing to go—would go anywhere, so he did not belong to a Culbreath. . . H. C. Culbreath made offers to the defendant [his uncle]; first, of one hundred dollars to take Vincent back; second, to arbitrate; third, of two hundred dollars to rescind; . . [13] the defendant refused, saying that the boy was sound when he sold him, and that he would not have him again as he had jerked him down . . For the defendant, there was testimony that the defendant . . bought Vincent in 1845; . . about ten years old, . . grown to be a very large, stout and strong fellow; . . always clumsy, and was (as it was variously termed) double-jointed, box-ankled, or African-footed; . . [16] The jury found for the plaintiffs $200." New trial refused.

Hadden v. Leibeschultz, 11 Richardson 505, November 1857. The plaintiff "had entrusted the slave, his property, to the care . . of . . McEvoy, a boot-maker . . as an apprentice—that disgusted with the noise which the slave made at night in his attempts to play the fiddle, the defendant, after previous warning to the slave, but without application to McEvoy, on two successive nights, entered the shop where the slave was playing, and flogged him in the presence of McEvoy, and against his remonstrance—not desisting the last time until, after choking McEvoy, he had been hustled out of the shop by other slave-apprentices, whom McEvoy called to his assistance."

Held: the plaintiff is not entitled [506] "to recover the forfeiture prescribed by the fifth section of the Act of 1839. . . [507] an action of trespass . . was the only remedy."

Rippy v. Gilmore, 9 Rich. Eq. 365, November 1857. Will of Arndell, executed 1826: "to my beloved wife, Rhody, . . during her natural life or widowhood, . . one negro woman named Eliza," In 1846 the widow, [366] "in consideration of two hundred and fifty dollars, paid her by . . Sarratt, . . sold . . to him Emeline, a small girl, child of Eliza, warranting the title; and subsequently Sarratt sold this negro, and she has been carried out of the State, and cannot now be found. . . [367] 1857, the Commissioner . . recommended that the estate [of Rhody Arndell] . . be charged . . with [eight hundred dollars] the value [of Emeline]." Report confirmed.

Gourdin v. West, 11 Richardson 288, January 1858. "Magee . . hired . . John, of plaintiff, to work on board of the steamer . . which . . he commanded. . . the steamer . . saved a wreck. . . a Committee of the Chamber of Commerce . . awarded a certain amount to the . . crew . . Capt. Magee died a few days before . . and the defendants, his executors, represented the whole slave crew, . . giving consent for them . . and they received the amount awarded to the slave crew. . . seventy-three dollars and sixty-three cents was allowed to the steward, (John.)" Held: [295] "the amount awarded for John's services belongs to Captain Magee, . . because his contract with the plaintiff confers the right to receive it."

Josey v. Railroad Co., 11 Richardson 399, May 1858. Rose applied "for a ticket to go to Kingsville which was refused by the agent, because she produced no authority from her owner for that purpose. She was seen on defendant's cars" and disappeared a day or two after leaving them. [400] "Scarborough was asked, at what amount he would estimate the damages to the plaintiff by the loss of Rose . . [He] answered four hundred dollars—that it was the only negro the plaintiff had, and although he would not give four hundred dollars, yet a man that wanted such a negro would." [403] "The slave was mentally an imbecile, physically a cripple, and morally a runaway, as to whom witnesses well hesitated to affix scarcely any market value." [400] "The jury found for the plaintiff three hundred and sixty-six dollars and sixty-six cents." New trial granted: [404] "The verdict appears to us wild and capricious," [Whitner, J.]

Richardson v. Dingle, 11 Richardson 405, May 1858. A slave was "hired . . in 1855, and drowned while employed on a steamboat, contrary . . to the terms of hiring."

Wilson v. Welch, 11 Richardson 410, May 1858. "forty-seven dollars and eighty-nine cents, . . for bacon, clothing, blankets, shoes, etc., furnished the slaves" in 1852.

Hair v. Hair, 10 Rich. Eq. 163, May 1858. [170] "She said he might go and leave her, provided he would leave her the negroes (three in number, the only ones he had, which he had acquired by his marriage with her.) . . Having completed his preparations, on Sunday, the 27th September, 1857, about the hour of midnight, he called his two negro women to the field, under the pretence of driving out the hogs, but, in fact, with

the view of securing and carrying them off. He seized them both. They made a great outcry, which reached the ear of the plaintiff [his wife] at the house. The negroes were unwilling to go; one of them (Hagar) made her escape; the other one (Ann) he tied, went to the house and got her young child. He put them both in a conveyance which he had ready, carried them to Blackville, where he put them on the cars that same night, and carried them off to Louisiana, where they yet remain. The plaintiff . . has with her Hagar, who, immediately after the defendant's departure, came in to the plaintiff, and continues to serve her;"

Hodges v. Chick, 10 Rich. Eq. 178, May 1858. Will of Dr. Burwill Chick, dated 1846: [182n.] "As George is afflicted, my wish is that he should choose which of my children he would rather serve, and whichever he chooses will take him at valuation, by two disinterested men, which will be deducted from their part of the amount coming to them from my estate. . . [183n.] My wish is, . . should either of [the negroes] . . that I have given away, have an increase before my decease, the heir that own [*sic*] the mother must pay over the valuation to the rest of my legatees, . . If I have left out any negroes not willed, my executors will have them appraised, and let whichever of the heirs that has the family take it as so much paid them towards their legacy."

Sanders v. Anderson, 10 Rich. Eq. 232, May 1858. Articles of agreement, 1855: "and if the purchase of the plantation were completed, to hire to the plaintiff, for . . five years, beginning January 1, 1856, and in consideration of $1,000 a year, . . [twenty-three] slaves, . . and the plaintiff, Sanders, covenanted to pay the purchase money, and hire . . to the defendant, and 'that he will feed, clothe, and otherwise treat the . . slaves in a kind, humane, and proper manner; and should . . Sanders, at any time during the said five years, depart this life, or treat . . any of them cruelly, or neglect to furnish . . any of them, with proper clothing, food, houses, bedding, or medical aid in sickness, . . in such case, at the end of the year . . Anderson . . [233] shall have the right to end this agreement, so far as the hiring of the slaves forms a part of it, and take possession of the same.' . . On January 1, 1857, plaintiff paid to the defendant $1,000 for the previous year's hire; and . . the same day, the defendant retook the slaves from the plaintiff's plantation, and he still retains the possession of them. . . The defendant, in his answer, insists that the plaintiff broke, and consequently ended, the covenants concerning the hiring of the slaves, by denying defendant's right to go upon the plantation to ascertain the good or ill-treatment of the slaves, and by ill-treatment of the slaves, especially in the matter of clothing. . . [235] Concerning the treatment of the slaves hired by the plaintiff, the proof generally is, that he is a kind, even indulgent master; that he furnished food sufficient for these slaves; that he improved their habitations by building new houses, and repairing the old; and that the slaves continued in good health. The only point upon which his humane treatment has been assailed, is in respect to the clothing . . Some . . witnesses said, that the Georgia kerseys in which he clad the slaves, were too thin for workers on a rice plantation, and perhaps on a cotton planta-

tion. . . Auckland is high up on the Ashepoo, and is a mixed plantation of rice and cotton, where it is practicable in severe weather to remove the hands from the rice ditches to other employment. Most of the witnesses testified that the plaintiff clothed these slaves snugly—that he did as much in this respect as his neighbors did to theirs, and fully as much as the defendant had been in the habit of doing towards these same slaves on the same place."

In re Bates, 2 Fed. Cas. 1015 (Bett's Scr. Bk. 574), September 1858. In August 1858 "the U. S. brig *Dolphin* took possession of the brig *Echo*; that on examination she proved to be a slaver, with a cargo of three hundred and twenty negro slaves on board, a crew of Spaniards and Americans," The crew of the *Echo* were committed for piracy in engaging in the slave trade in violation of the act of May 15, 1820.[1] Motion to be discharged from custody denied.

Clanton v. Young, 11 Richardson 546, November 1858. [547] "Hiram was charged with the murder of Mrs. Young by her family, and was a runaway during most of the year 1853." [546] "Three hundred dollars reward . . [was offered by defendant for his] apprehension and delivery, to the jail" [547] "After about one year the defendant [plaintiff?], with . . McCaskill, brought Hiram, so much reduced that some . . would not have known him, to . . a magistrate . . who delivered him to . . his constable, in whose custody he continued until he was tried, a few days after, by a Court of Magistrate and Freeholders. . . Hiram was acquitted." Nonsuit ordered: [550] "not a strict compliance with the terms" of the reward.

State v. Clayton and Carter, 11 Richardson 581, November 1858. "The prisoners were indicted[2] . . for inveigling, stealing and carrying away . . Gilbert, the property of Margaret Hays; and . . for aiding Gilbert in running away" [595] "the two prisoners were in concert on the same evening of the asportavit by Carter, in an enterprise pretended to be directed towards some inveterate runaway slave [[586] 'that had been out eight years'], yet ending in the . . asportavit by Carter of Gilbert . . who was not runaway," [582] "Carter entered the cars [about midnight] . . with a negro man; they took seats opposite to each other, in the negro or conductor's car, as it is termed; . . paid the fare of the negro; . . was arrested . . [583] denied having paid . . the negro's fare, . . [584] Clayton did not enter the cars; [said later] . . [585] 'all I did was to go to the railroad and fetch back the horses; for one of the negroes sold by Carter I received one hundred dollars; . . for another . . one hundred and fifty' 'they have been persuading me to get into [this business] . . for about two years.'" Both prisoners were convicted. New trial refused.

Hudson v. Brown, 11 Richardson 643, November 1858. "Jake, a negro fellow of the defendant Brown," was suspected of stealing "a considerable sum of money" from the plaintiff. Fifty dollars were found in

[1] 3 St. at L. 600, ch. 113.
[2] Act of 1754.

Jake's box. Brown had thirty dollars of the money, [644] "which he said Jake had given to him for a watch. . . In various ways, . . the plaintiff recovered" all of the lost $898, except $259.50. "A day was appointed for a trial at Brown's. These parties and some neighbors met, but no legal proceedings were commenced. Brown said that the plaintiff would prosecute Jake if he did not get his money—that he would whip the negro himself, but he did not wish the law to whip him—that he did not want him cut up, as he intended to sell him; and that if the plaintiff would wait until January, he would pay him his money. The plaintiff agreed to wait, and . . the single bill [for 259.50] sued on was given. . . The negro was well whipped with a strap in the presence of Brown and others—Brown making great threats to scare him, and frequently saying to him, 'I have got to pay the money, and you've got to tell where it is.' Thirty or forty dollars were . . [645] got by Brown from Jake, and those to whom Jake had given portions of the money;" "The defence was that the bill was given to compound a felony. . . [645] The verdict was for the plaintiff, the amount of the single bill and interest." New trial refused. Judge O'Neall dissented: [648] "I think that the single bill was given to compound a felony."

Dr. Peake v. Scaife, 11 Richardson 672, November 1858, "Assumpsit for medical services rendered to slaves of the defendant. . . [673] '1857, . . Visit and prescription for Manuel, $2,00: mileage, $3,00.' One of the items was $15, for attendance on the same day to different slaves. . . overseer . . witnessed the services . . rendered, and thought that . . they would amount to $115, the sum claimed. . . Jeter, testified.—In December, 1854, I proposed to hire fellows from the defendant to work on the . . Railroad: offered him $156 a piece, 'I to find clothes, etc., and lose all time, he to pay the Doctor's bill.' . . Some weeks afterwards he said that I might have the fellows. . . I placed [them] . . under an overseer . . along with others that I had hired, telling the overseer to employ a physician, in case of sickness, on the best terms practicable. I continued to keep the fellows, and had them in 1857. The overseer testified—I had thirty-two fellows under me; ten or twelve of them belonged to the defendant. According to the directions which Mr. Jeter gave me, I sent for the plaintiff, the nearest physician I knew of. I sent only when it was indispensably necessary. All of the defendant's fellows were sick in the course of the time. One of them, Friday, was hurt between two cars: another, Manuel, was hurt by a bar of iron." Nonsuit ordered.

Affirmed: [675] "Jeter . . is liable for . . [Dr. Peake's] bill. It may be that he (Jeter,) can recover the amount of it after paying it, from the defendant. Between them there is privity of contract:" [O'Neall, J.]

Neal v. Sullivan, Trustee, 10 Rich. Eq. 276, November 1858. [277] "The negroes [of whom Moore has the use for life] are likely: Sylvia is about forty years old, and with her two children, a boy of six years, and a girl of one year, is worth $1,000 to $1,400 absolutely, or $60 for annual hire. Louisa, about eighteen . . [278] worth $1000, and $75 for hire. Hagar, about thirteen . . worth $900, or $75 for hire. Emma,

about eleven . . worth $800, and $60 for hire. Dave, about twenty-eight . . worth $1,100, and $150 for hire. Avarilla, about twenty, and her child, worth $1,200, and $60 for hire; and Elijah, about twenty-nine . . a plantation blacksmith, worth from $1,200 to $1,400, and for hire $150. . . [280] If sold at all, an absolute sale [and not a sale for the life of Moore] would be preferable. . . Slaves sold for an uncertain time are exposed to the risk of being overworked from the greediness of purchasers to reimburse themselves and make profit, and thus their lives may be shortened, and their fruitfulness impaired. So, too, notwithstanding every precaution of forthcoming bonds, and the like, they may be eloigned and lost. There are objections even to hiring, in its bearing on the interests of remaindermen; but it is the least objectionable . . decreed that the . . trustee [of life tenant] . . [281] while the debts . . remain unpaid, hire out the said slaves at public outcry, . . allowing discretion . . to reject the bid of any unfit hirer, and to take all proper measures to secure the humane treatment of said slaves." [Wardlaw, Ch.]

Wylie v. White, 10 Rich. Eq. 294, November 1858. Will: "I will to my son, . . during . . life, the use and benefit of . . my negro woman Patsy and her three children, . . and also my negro man named Bob; but the said negroes not to be removed from the State, or to be disposed of by him, or any other person, whatsoever, but to remain exclusively for the annual support of my . . son and family."

Lott v. DeGraffenreid, 10 Rich. Eq. 346, November 1858. [348] "he had paid her $15,000 for twenty-six negroes on Jan. 1, 1836,"

Cloud v. Calhoun, 10 Rich. Eq. 358, November 1858. [363] "Plaintiff, in . . 1853, a few days after the intermarriage of Calhoun and wife, promised to give to his daughter or son-in-law about twenty negroes, and . . Mr. Calhoun sent a wagon and team, under charge of his overseer, from Pendleton to Chester, to receive and transport the negroes. Crenshaw arrived at Dr. Cloud's . . Sunday evening, . . and was requested to abide the next day, that the plaintiff might attend a sale on Monday, . . and purchase, if practicable, a substitute for Bob, . . who had recently married the female slave of a neighbor. . . the plaintiff proceeded to the sale, . . could not purchase a negro to be put in Bob's place, and showed Crenshaw the negroes to be carried away, and directed him to set out early the next morning. Crenshaw started with the negroes homewards about daylight . . and reached the plantation of defendant, Calhoun, a week or ten days afterwards. Immediately after starting, Crenshaw received a letter from Dr. Cloud to Mr. Calhoun, . . 'Mr. Crenshaw leaves this morning with the negroes, and I think will attend to their comfort on the road. I detained him one day to attend the sale of some negroes in order to get a man to send in Bob's place, as he has a wife, but failed. If he conducts himself well and wishes to return next year, I may send another in his place.'"

Owners of Brig James Gray v. Owners of Ship John Fraser, 21 Howard 184, December 1858. [191] "there were two of the crew in the

forward part of the vessel, whose duty it was to keep a look-out; but, being colored persons, they could not, by the laws of South Carolina, be examined as witnesses. But the law requires of a colliding vessel, that she shall prove not only that she had a competent look-out stationed at the proper place, but also that the look-out was vigilantly performing his duty. And if he placed there persons who cannot be witnesses, it is his own fault; . . and can therefore be no sufficient reason for the absence of that proof which the law requires him to produce." [Taney, C. J.]

State v. Farr, 12 Richardson 24, January 1859. "shop-keeper, . . convicted of buying [one bushel of] corn from a slave [not having a permit]." Held: the indictment was good under the act of 1817 [1] or the act of 1834.[2]

City Council v. Luhrs, 12 Richardson 69, January 1859. "actions . . to recover the penalty of twenty dollars in each case, for violations of the city ordinances against negroes loitering."

Lawton v. Tison, 12 Richardson 88, January 1859. Dr. Riley testified: [95] "On the . . Road, they caught a runaway negro [in 1844], . . came to a fence across the road; . . witness held the negro, while his brother pulled the fence."

Jones v. Jones, 12 Richardson 116, January 1859. [117] "Upon the hearing of a summary process, founded on a note executed by . . a mark by the defendant, . . a free negro, and the execution purporting to have been attested by another free negro, the plaintiff . . free negro . . sought to make proof . . by answers to interrogatories served on the defendant. The Clerk . . [118] refused to swear the defendant to his answers, . . Next, . . evidence of the genuineness of the signature of the attesting witness . . was received, and upon that alone a decree . . for the plaintiff."

New trial granted: I. [119] "the Clerk ought to have sworn [defendant] . . [120] to his answers, and then . . his deposition should have been heard." [118] "such a person is entitled to the benefit of the laws for the relief of insolvent debtors, and . . [119] must be sworn to the truth of his schedule, . . The plaintiff having waived any objection and the defendant being willing to swear . . why should that be denied any more than in the case of the insolvent debtor, . . [120] [II.] the execution of the note [was not] adequately proved by the evidence of the handwriting of the subscribing witness . . The witness could not have been called . . by reason of status;" [Withers, J.] Glover, J., concurred in the opinion on the latter point, but dissented from it on the former: [123] "It is certainly the first time in South Carolina that the right of a free negro to appear on the witness' stand in the superior Courts and give evidence on the trial of causes has been recognized."

Claussen v. Salinas, 12 Richardson 124, January 1859. "Ned, if sound, would have been worth eight or nine hundred dollars. Dr. Fitch

[1] 7 St. at L. of S. C. 454.
[2] 6 St. at L. of S. C. 516.

who . . made a *post mortem* examination, stated, that he died of the softening of the brain,"

Jamison v. Knotts, 12 Richardson 190, May 1859. [193n.] "the Commissioner advertised to sell [the mortgaged slaves] . . on the sale's-day of April [1857] . . when it came to . . [his] knowledge . . that the . . negroes had been removed from this State [to Alabama], . . by the [mortgagor.]"

McKenzie v. Barnes, 12 Richardson 205, May 1859. [209] "when . . both [sheriff and jailor] were away, one or both of the women [wife and sister of the jailor], with the aid of a negro, did the duties of jailor. . . a runaway slave . . broke several locks, and having got into the room from which E. T. escaped, went through the hole,"

Belcher v. McKelvey; *Tucker v. Belcher*, 11 Rich. Eq. 9, May 1859. [11] "Tucker was about eighty years of age, altogether unlettered, and of a mind, originally feeble, impaired by age and disease. . . His neighbors dealt with him in small matters of trade, but usually through the agency and under the supervision of some of his slaves. . . in his small purchases . . he asked for the articles of merchandise, but one of his slaves, generally George, would make the selection. He was unmarried, and excessively fond of his slaves and indulgent to them; indeed, they fared better than he did himself. . . His slaves, especially George, had great influence over him and he anxiously desired their emancipation at his death. Of defendant Belcher, he knew nothing . . except from the representations of George, in these particulars apparently truthful, that Belcher was . . the kind master of many slaves. George was a cabinet-maker, and had worked at his trade for some years in the neighborhood of . . [12] Belcher, and had there taken . . a wife . . George was shrewd and intelligent, had been taught to read well, and he enjoyed the confidence of his master, . . 1854, he drove his master . . to the house of . . Blakely, . . and producing the bill of sale of that date, in Belcher's handwriting, and $900 in bank bills, and Tucker acknowledging the previous payment of $100 to him by George, Blakely attested as a witness the mark of Tucker to the bill of sale, and then delivered it to George. At the time, George said that $700 of the money belonged to himself, and that he had borrowed $200 from Belcher, and thereupon Tucker returned $200 to be repaid to Belcher, and Blakely, as Tucker's agent, took possession of $700. . . Johnson also attested . . [13] two or three days after . . he was sent for to Tucker's house, when Tucker said, in the presence of George, I wish you to draw a bill of sale to Belcher for my other slaves. I wish my negroes to be free at my death, and not to serve another; and George has told me that Belcher would befriend him and the other negroes by taking them to a free State. Witness said to George, you are Belcher's property, and George replied, I am not afraid; Belcher is too good a man not to do what he has said, and he will contrive a way for my escape. . . witness did draw up a deed of gift from Tucker to Belcher of the former's land and negroes, and George, from his own money, paid $1 50 for the service; but the matter was not then consummated."

In June Tucker [9] "executed a paper, purporting to be his last will . . whereby he attempted to bestow his whole estate . . [10] upon . . Belcher [[19] 'a perfect stranger']; . . also . . a bill of sale of all the [seven] slaves remaining in his possession, [reserving a life estate.] . . [14] on same day Tucker bought his burial clothes . . selected by George." [17] "George . . remained for about two years [in the possession of Belcher] . . and disappeared . . about April, 1856," He was [14] "much attached to [his wife]. . . There were reasons which induced [her owners] . . to give their active or tacit consent to her leaving the State. The defendant has no doubt she did so about April, . . 1856, and that George went with her ['probably' to Pennsylvania]. . . not in pursuance of any understanding . . with . . Tucker," Tucker died in 1855, and his will was set aside. McKelvey, the administrator, [10] "was proceeding to sell the [seven] slaves . . when . . bill . . was filed [by Belcher] for injunction . . granted . . [In 1858] bill was filed by . . next of kin . . for having declared void both of the bills of sale . . as executed through undue influence, and in violation . . of the Act of 1841 [1] to prevent emancipation, . . [12] Belcher in his answer . . says . . 'that all the money paid for George was his own money, . . no . . earnings of George.' . . [14] denies that either of said bills of sale was made under any trust"

Decreed that the deed of June 1854 is void, and [16] "that the bill of Belcher *vs.* McKelvey . . be dismissed." [22] "the defendant was not accountable . . for the value of . . George;"

Gillam v. Caldwell, 11 Rich. Eq. 73, May 1859. Will of Caldwell, who died in 1848: [77] "Should any of the slaves . . become so turbulent and unruly as to become difficult of government, . . or should . . my estate require more funds . . I authorize my executors to sell such . . as may become unruly . . or to sell a number sufficient to raise such additional funds as may be absolutely necessary for the use of my estate, provided that my executors shall be restricted to the sale of old negroes, . . and shall not be at liberty to sell off young slaves."

Fretwell v. Neal, 11 Rich. Eq. 559, May 1859. In 1831 a slave [562] "about thirty-five years old, with her two children, . . [563] about two years old, and . . four weeks old, [was sold] for . . $465, a fair but rather low price. . . they are now [1858] worth $3,000 or more."

State v. Rollins, 12 Richardson 297, November 1859. "indicted under the Act of 1817, . . that the slave went into defendant's shop with five pounds of bacon and an empty bottle, and came out without the bacon and with a bottle of whiskey. The slave said he . . would have brought more [bacon] if he had known that the defendant would have taken it, who replied, you might have brought five, ten, fifteen, twenty or fifty pounds, and I would have taken it. At this term the defendant had been before convicted, under the Act of 1834, as a . . retailer of spirituous liquors, on the same evidence, . . pleaded the former conviction in bar, which was held bad, although both offences arose from the same acts . . convicted." Judgment arrested.

[1] 11 St. at L. of S. C. 154.

Boland v. Railroad Co., 12 Richardson 368, November 1859. "a young negro man [slave] . . was on Christmas day, 1856, run over by a freight train . . had a flask with some whiskey . . probably lying [on the track] drunk and asleep . . [370] on the train, besides the runner and conductor, were a white wood-passer, . . a negro fireman and two negro laborers;"

Simons v. Fox, 12 Richardson 392, November 1859. The slave of Geiger "ran away . . was in the possession, afterwards, of . . Sineath, . . from 1848 or 1849, to his death in 1855 . . [administrator] sold [the negro to] . . Lamb, who sold to Moody, who placed him in . . hands [of Ryan, 'a broker, in Charleston,'] for sale; he sold to the plaintiff for seven hundred dollars; . . had him about two weeks, when he ran away. . . taken up as a runaway . . and put in gaol. . . [393] Geiger identified him as his runaway slave, and sold him to . . Harrison, who carried him out of the State."

Held: "Sineath . . had an adverse possession for more than four years. This defeated Geiger's title." [395] "there was no proof, that Sineath knew him to be a runaway."

American Bible Society v. Noble, 11 Rich. Eq. 156, November 1859. Autograph will of John B. Bull, dated April 1843: [162] "To my . . wife, I . . give, my good and aged servant Doritha (Doll) and all her children, and grand-children, all her descendants . . Including the husbands of her daughters.—Pompey the husband of of [*sic*] Nelly, I make this . . earnest request, that during the time of her natural life, Doll be treated with all that humanity, moderation and kindness which her advanced age and her faithful services call for.—also to my dear wife I . . [163] give all the servants on my farm at Little River. Their names as follows,"

Held: [173] "the word *children* . . has not received a restricted meaning in law confining it to *post nati*. I regret that the decision in Seibles *vs.* Whatley[1] was different as respects the import of the word *increase*: but I do not feel bound to carry it beyond its letter, and apply it to *children*, . . [174] As to the other negroes . . given by name . . without . . children . . does not carry the *post nati* issue. Such issue is . . intestate, and falls under the direction to sell." [Johnston, Ch.]

Carmichael v. Buck, 12 Richardson 451, January 1860. [453] "The custom . . has always been, that the man cutting the timber sold it and received the money . . except when negroes were the carriers [of the raft]."

Williams v. Thweatt, 12 Richardson 478, January 1860. [479] "The governor offered the reward for the apprehension and delivery of . . a fugitive slave charged with a felony, . . The plaintiff apprehended him and delivered him to the constable,"

State, ex rel. Fanning and Lord, v. Mayor, 12 Richardson 480, January 1860. "The relators . . free persons of color, . . were arrested

[1] P. 364, *supra*.

by the police of Charleston and brought before the Mayor [1] on an alleged charge of gambling; [2] . . adjudged . . guilty, . . sentenced each to pay a fine of fifty dollars, or to receive twenty lashes, and they pray that a writ of prohibition may issue, . . [because] [481] by Act of Assembly [3] the trial of free persons of color is directed to be before a Court . . of magistrates and freeholders,"

Petition dismissed: "The Act of 1839 . . embraces offences against the laws of the State, and a Magistrate's Court is not a proper tribunal to hear . . alleged violations of ordinances"

Mordecai v. Jacobi, 12 Richardson 547, January 1860. "November or December, 1858, the defendant placed [three slaves, 'Horace, his wife . . and their son'] . . in the hands of the plaintiff, who is a broker, for sale, and agreed to allow two and a-half per cent. commissions on the proceeds. The negroes were boarded by the defendant himself, but they visited the plaintiff's office almost every day, for nearly, if not quite, three weeks. . . 14th of December, the defendant . . sold them to the Rev. Mr. Lafar, for . . one thousand nine hundred dollars,"

Held: the plaintiff is not entitled to commissions.

Anderson v. Aiken, 11 Rich. Eq. 232, January 1860. [237] "The defendant, with the knowledge which the mortgage gave him, purchased . . Thomas, in satisfaction of his debt, removed him from Florida, and in Charleston sold him at auction, without a warranty, to a negro trader, for $800. . . the defendant, knowing or believing that the slave would be recovered from him, if he remained in South Carolina, sold him to one who was likely to remove him, and who did remove him to parts unknown." [233] "Thomas, 'a likely brown man, about twenty-two' . . was ruptured, but as he was recommended by Aiken as a good coachman, . . [a witness] would have given $700 . . if the title had been good."

Ford v. Porter, 11 Rich. Eq. 238, January 1860. Will of Elizabeth Williman, 1854: [239] "I give . . to my good friends, Dr. John Bellinger [and three others], . . my faithful negro slaves, George, Sam, Francis, Edwin, Sarah and Rose, with a *request* that they will extend to the said slaves all the indulgence, privilege and consideration, which the law will allow them, in the *character of owners,* to extend to them. . . I give to my kind friends, Dr. John Bellinger [and three others], . . two thousand dollars, to enable them to support the said slaves, . . when they, from age or sickness, may become chargeable upon them." Codicil, July 1855: [240] "I do hereby revoke the bequest made . . of . . Rose and Sarah, and also the provisions therein made, as far as relates to them; and I direct that . . Rose and Sarah, or the proceeds of their sale, become part of my estate;" The testatrix died the following month. [245] "The men included in the original bequest are able bodied; . . all about prime." "one of the women was young, the other was elderly,

[1] City ordinance of 1836.
[2] City ordinance of 1819.
[3] Act of 1839.

and was said to be sickly;" [252] "The legatees . . explicitly deny that there was . . any trust . . to hold said slaves in a condition of virtual freedom . . [253] one . . deposed that he . . would appropriate the wages to his own use." Chancellor Dunkin [251] "declared that the bequest of the [four] slaves . . is null and void;" [250] "Free . . persons of color, are sometimes very useful . . and the better, because they are few. But the greatest nuisances are *quasi* slaves—stalwart men, who have the same moral control over their nominal owners as, in this case, [the four negro men] . . [251] might attempt to exercise, with a copy of their mistress's injunction in their pockets . . It creates an anomaly inconsistent . . with the policy of the country, and which it was one of the prominent purposes of the Act of 1841 effectually to suppress."

Decree reversed: [254] "this Court . . is as little satisfied that to bequeath slaves with a request that the legatee shall extend . . 'all the indulgence . . which the law will allow them, in the character of owners, to extend' . . takes away their right of property . . as it is that such treatment is opposed to the policy of the law." [Johnston, J.]

Ex parte Nayler, 11 Rich. Eq. 259, January 1860. In 1858 [260] "Mrs. Kirk and her children removed to Kentucky with the negroes,"

Maffitt v. Read, 11 Rich. Eq. 285, January 1860. [291] "Clarinda . . had been purchased . . for three hundred and ten dollars; . . Mrs. Read . . brought Clarinda with her, and hired her out, as a cook, in Charleston,"

Wigg v. Simonton, 12 Richardson 583, April 1860. In 1851 Captain Peck hired Archy and John from W. H. Wigg. [584n.] "the first was steward and the latter pilot. . . He gave W. H. W., fifteen dollars per month for each, and gave them each five dollars or more ['Sunday money'], as was his habit. For about two years they behaved well, but afterwards the idea of freedom made a difference. He doubts if John's father was a white man from his appearance. Archy is lighter. He became very insolent towards the last three years he had him. . . [585n.] May 4, 1855, they quit him. Witness got a note from Archy, saying he had permission to go where he pleased, and next place he found him was in . . jail. John also left, and witness got him, and after two months they quit and were put in the work-house by W. H. W. . . John . . is quiet, and will sometimes drink. Witness thinks Archy is like W. H. W. Three years ago Archy wanted three dollars, and said he wanted to see Colonel De Lyon about his freedom, and said the Colonel told him he had better go back to his work. W. H. W. wanted to sell them, which alarmed them; and they wished witness to buy them. . . Common hands get two dollars per month. . . W. H. W. ordered them to be shipped out of the State for sale. The master of the work-house said he had a detainer placed on them, and refused to deliver them up," Simonton, "Attorney at Law," had written him in March 1856: "take notice, that the authority of . . Wigg to place in . . work-house . . Archy Wigg and John Wigg . . is disputed. . . [586n.] warned not to deliver . . to

. . Wigg," Simonton instituted proceedings to establish their claim to freedom, [583] " which the highest Court . . overruled. . . [584] Soon after the case . . was decided, early in 1858, executions against Wigg were levied on John and Archy, and they were sold by the sheriff." Wigg brought suit against Simonton: [586n.] " saith he . . hath sustained damage to the sum of three thousand dollars," Held: Simonton is not liable.

White v. Smith, 12 Richardson 595, April 1860. Moore and Smith, contractors, hired White's slave, Charles. [596] " Jackson was their agent . . the hands, and Charles among them, under the authority of Jackson, went back and forth, on the trains [from the saw-mill] . . loading and unloading the cars; . . 1857, . . while the train was . . moving slowly, . . the engineer intending to stop . . for the negroes to get on . . Jackson . . proclaimed to the negroes on the platform, 'all aboard;' . . Charles, in the attempt he made [to jump on a car] . . failed, . . two trucks passed over him, and he died "

Held: Charles was not such a representative of his master in work done " in common with other hirelings, as to constitute the master a co-employee with the hirelings." The fellow-servant rule does not apply to the case of a hired slave.

Stenhouse v. Bonum and Houston, 12 Richardson 620, April 1860. " actions . . upon a note. . . verdict . . for the plaintiff. Judgments . . entered, and the defendants moved . . [to] set aside, on the ground, that Bonum . . was a slave. . . refused . . appealed "

Motion granted: [621] " the slave . . was incapable of contracting,"

U. S. v. Corrie, 25 Fed. Cas. 658 (Charleston *Daily Courier,* April 19, 1860). The United States attorney for the district of Georgia charged that Corrie, commander of a vessel called the *Wanderer,* had decoyed and seized " on a foreign shore " and had landed in Georgia " certain negroes not held to service by the laws of either of the states or territories of the United States, with the intent to make them slaves; . . contrary to the fourth and fifth sections of the act of congress of the 15th May, 1820.[1] . . a warrant was ordered to issue " for his arrest. Corrie was " found " in South Carolina, where " he was admitted to bail, and became bound to appear . . at the next ensuing term of the circuit court of the United States for the state of South Carolina." Before that term arrived, " in the district court of the United States for the state of Georgia, a true bill was returned to that court, by the grand jury, against Wm. C. Corrie for piracy, under the act of May 15, 1820." A motion for his removal to Georgia for trial was refused by the District Judge for the district of South Carolina.

Held: the circuit court of the United States for the state of South Carolina has exclusive jurisdiction. [661] " No offence committed under the act of 1820 can be within the limits of a state: . . [662] there exists a misapprehension of the act of congress of the 15th May, 1820. It has been said that by this act of congress the slave trade has been declared

[1] 3 St. 600.

piracy. I cannot find in this act anything which sustains that construction; . . [664] in regard to the offences created by this act, it is of much consequence under the fourth and fifth sections to determine whether the negro or mulatto was bond or free, . . The intent prohibited is to make a slave. . . [665] it could not be said that there was proof of an intent to make him a slave, if he was already a slave.[1] To purchase on that foreign coast a slave may be by other laws of the United States, passed for the suppression of the slave trade, an offence punishable by fine and imprisonment; but no law has yet said that it is piracy. . . [699] If the slave trade, regarding it as a trade or business, is to be declared piracy, the act is yet to be passed by congress. If the power to congress [to declare the slave-trade piracy] was granted at a time and under circumstances which are so wholly different from the time in which we live and the circumstances which surround us, as to show that the grant of it without restriction was improvident, it is for the states by whom the grant of power was made, to resume it or require modifications of its exercise." [Magrath, J.]

State v. Elrod, 12 Richardson 662, May 1860. "The trading . . consisted in her letting the slave have a half gallon of whiskey in exchange for a bushel of corn. . . convicted [also] of retailing without a license. . . she sold a teacup full of whiskey to a slave . . for . . ten cents. At a subsequent period, the witness . . saw her deliver to the same slave half a gallon"

Parker v. Partlow, 12 Richardson 679, May 1860. "a sale . . for partition . . 1859, . . of a negro man . . at . . $890; . . the plaintiff [as commissioner] had caused to be proclaimed . . that there would be no warranty of the soundness . . [680] unsoundness ['dropsy of the heart'] . . apparently unknown to any one at the time, . . established by the post mortem examination" The slave [679] "died about eighteen days after the purchase," Held: the purchaser is bound to pay.

Weaver v. Wright, 13 Richardson 9, May 1860. [12] "sold a negro man . . 1854, for nine hundred and seventy dollars;"

Willis v. Jolliffe, 11 Rich. Eq. 447, May 1860. See Jolliffe *v.* Fanning, p. 451, *supra*. About 1846 Elijah Willis of South Carolina, unmarried, [448] "began to live in concubinage with one of his female slaves, . . Amy, who bore [him] . . [495] five mulatto children . . two of them died; . . [497] Amy [[507] 'a dark yellow woman'] was not handsome. . . had several husbands before she took up with Willis. . . Amy's last husband is still on Willis' plantation; . . Willis was distressed when one of the children died;" A witness who took dinner with Willis, [493] "thought Willis . . in giving [the mulatto children] . . the best victuals from the table, . . [494] treated them as his own children; it was then that one of the small ones got in his lap. . . He had seen Amy trading largely, and as freely as a white woman, . . at James Willis' store. James

[1] See U. S. *v.* Libby, 26 Fed. Cas. 928 (Maine, 1846), *contra*.

was a nephew of Elijah Willis, and would make much of Amy, in order to induce her to take up goods, calling her Aunt Amy, and saying to witness, with a wink, 'now I am going to make a big bill.' . . James Willis told me she had ridden there in his uncle Elijah's carriage. . . [495] I have seen other white men take up their little negroes in their laps—some coal black little negroes." [493] "Willis carried the above persons, in 1852 or '53, to . . Baltimore [[492] 'with a view to putting them at trades in that State'], and brought them back . . after a few months." Dr. Guignard testified that about 1853, he [504] "recommended placing them in the neighborhood of Norfolk, Virginia, where about two thousand . . free persons of color resided, and an ineffectual attempt for their expulsion had been made before the legislature of Virginia." [448] "He executed . . his last will . . 1854, in the office of Jolliffe and Gitchell, attorneys-at-law, . . Cincinnati . . appointed . . executors [from Ohio] . . bequeaths to his executors . . Amy and her seven children, . . and descendants, . . executors to bring . . said persons and their increase . . to . . Ohio, and to emancipate . . them" and he bequeathes and devises the rest of his estate to his executors in trust, for Amy and her children. He asked Harwood of Ohio to act as executor. [508] "He stated that he considered himself worth in the neighborhood of $75,000, . . inclined to apoplexy . . asked me to act as his executor. . . I asked him if he had other slaves . . he had. I then stated . . that if he . . expected me to act as executor in selling them, I could not consent . . He said . . he intended to make arrangements with reference to them himself, . . I urged him to liberate them, . . he wished them located on Western lands, in the farming business, either in this State, Illinois, or Wisconsin." [450] "In May, 1855, Elijah Willis left his home in Barnwell, for Cincinnati, taking with him Amy and her mother, and Amy's children, . . [495] three black ones and three white ones" [450] "the eldest three having been begotten by a man of color. . . [503] took passage on the upward train . . He had, as baggage, several new trunks, and no such luggage as negroes usually carry. The negroes were all dressed in much better style than is usual with negroes; and Mr. Willis sat with them in the car nearly all the time. . . [507] came [with them] upon the boat . . at Louisville." He told a fellow-passenger "he was going to Ohio, to set them free, and school the children. . . the younger children were light mulattoes. One was an infant, . . I asked him if the children were his own. He said he was the father of part of them." [450] "He arrived with them at a wharf in Cincinnati, . . and, having disembarked, he died betwixt the landing and a hack, in which he was about to proceed with said negroes to lodgings. . . [494] he was buried, in a negro-graveyard." The executor, in June, executed a deed of manumission. Chancellor Wardlaw, discussing the subject of slavery from the time of Moses [*ibid.* 463-491], [491] "adjudged that Amy and her children were not free persons at the death of testator, and consequently that the bequests for their benefit were void by 4 sec. A. A. 1841."

Decree reversed: [514] "they . . were free from the moment when, by the consent of their master, they were placed upon the soil of Ohio

to be free. I have no idea that the soil of Ohio *per se* confers freedom. It is the act of the master which has that effect. . . [516] to permit the devise in their favor to operate, is, we are told, contrary to the policy of South Carolina. . . But I should feel myself degraded if, like some in Ohio and other abolition States, I trampled on law and constitution, in obedience to popular will. There is no law in South Carolina which . . declares that the trusts in their favor are void." [O'Neall, C. J.] Wardlaw, J., dissented.

Wilson v. McJunkin, 11 Rich. Eq. 527, May 1860. In 1856 [528] " thirty-seven negroes [of the estate] . . were valued at $25,008 25."

Miles v. Wise, 11 Rich. Eq. 536, May 1860. The owner of the slave was [537] " partially idiotic,"

The Huntsville, 12 Fed. Cas. 996 (2 Blatchford 228), November 1860. For assisting in the salvage of the steamship *Huntsville,* on fire in Charleston harbor, $2,500 was awarded [1008] " to the owners of the [steamship] *Nina,* including therein the compensation for the negroes, either owned or hired by them, and comprising the crew of the *Nina,*"

Muldrow v. Railroad Co., 13 Richardson 69, November 1860. " Bill . . died while in the service of the company, . . April . . 1857, by . . negligence of the company . . action [for his value] . . decided against them by a verdict for fourteen hundred dollars."

Held: " the verdict . . was a good defence for . . the present claim of hire . . from . . April . . to the end of that year."

State v. Blair, 13 Richardson 93, November 1860. " The defendant was convicted of a riot. . . Oxner was passing, with his wagon . . along a public neighborhood road . . on defendant's land for about a mile. A part of the way . . had become impassable, and the neighbors for some time before had used a track adjoining the road, . . When the wagon was within about twenty feet of the new track, the defendant suddenly approached, and . . Oxner inquired, ' What does this mean? ' Defendant replied, ' To make you keep the sworn track.' Oxner ordered his servant to drive on, when the defendant struck the mules. . . [94] said he would put a hole through him. Oxner then sent for his wife, and gun, and boys. Defendant went and returned with three of his negro fellows and a double-barrelled gun, which he recapped, and immediately after more of his negroes came. After some altercation, defendant went . . to the house, leaving his three negro men and negro women, and as Oxner would attempt to turn his mules into the new track one negro man would seize the mule and the other the wagon wheel. . . finding it fruitless to attempt to advance, Oxner returned. The feet of one mule . . were beyond the bed of the old road, when defendant's negro would force him back into the road." Held: " the defendant should not escape because . . not . . present when his negroes . . seized the wheels."

Scarborough v. Reynolds, 13 Richardson 98, November 1860. " action . . for breach of a written warranty of soundness of a negro girl [mulatto woman], purchased . . for nine hundred dollars. . . [99]

one of the pretences of unsoundness was an arm dislocated in infancy, and which was badly set, rendering the arm crooked, but which did not affect her in labor; she could hoe and chop with an axe as well as women generally can. In the opinion of the witness it would affect her value on sale. . . [100] charged the jury . . not such unsoundness for which the plaintiff ought to have a verdict." Affirmed.

Sloan v. Whitlock, 13 Richardson 174, May 1861. [175] "The plaintiff . . [in 1857] continued in quarrying rock for twenty-four or twenty-five days, having in his employment his two sons, Robert and Edward, a negro woman, and a wagon and team. . . Plaintiff's work was proved to be worth two dollars per day; his son Robert, two dollars; Edward, one dollar and fifty cents; the negro woman, one dollar,"

Fountain v. Bryce, 12 Rich. Eq. 234, May 1861. In 1859 Leah (about 34), one child of hers (about 4), and twins over one year old were sold to Cobb for $1300. The vendors [238] "stipulated . . to deliver said slaves at Cobb's depot for slaves, in Carnesville, Georgia, . . for . . five dollars,"

Ex parte Graham, 13 Richardson 277, May 1864. [282] "Graham, who is within the conscript age, had, as the overseer of Eliza E. North, . . been . . December, 1863, exempted from military service for one year . . under the authority of the second section of the Act of [C. S.] Congress, . . May 1st, 1863,[1] . . On the 1st May [1864], . . the enrolling officer . . supposing that by the . . [Act of] February 17, 1864, the exemption . . had been revoked, caused Graham to be arrested . . ordered . . discharged" .

Manning v. Manning, 12 Rich. Eq. 410, May 1866. [416] "remained in the possession of all the . . negroes, . . up to the time they were emancipated by the government of the United States, except . . Alph, . . Jim, . . Jack, . . all of which slaves left their owners with the army of General W. T. Sherman, about the 7th day of March, 1865."

Richardson v. Manning, 12 Rich. Eq. 454, May 1866. Richardson's will, dated 1859: [456] "It being my express will . . that the real and personal estate . . should not be divided or separated, whereby husbands may be parted from their wives, or children from their parents. . . And I do hereby enjoin my . . executors . . to see that the slaves herein given . . be well fed and clothed, and humanely treated; and that the laboring hands, besides the customary allowance of corn for bread, be allowed half a pound of wholesome meat daily."

Boyd v. Satterwhite, 12 Rich. Eq. 487, May 1866. Will, 1857: [488] "that all the remainder . . of my negroes be sold by families,"

Mitchell v. De Schamps, 13 Rich. Eq. 9, November 1866. "Near the close of December, 1864, the plaintiff, Mitchell, sold to defendant,

[1] [278] "there shall be exempted one person on each farm or plantation the sole property of a minor, a person of unsound mind, a *feme sole*, or a person absent from home, in the military, or naval service of the Confederacy, on which there are twenty or more slaves. . . for every person exempted . . there shall be paid annually into the public treasury by the owner . . five hundred dollars"

De Schamps, a negro wench, Amelia, and her two children, at the price of $11,000, 'to be paid in cotton at one dollar and thirty-five cents per pound.' . . [10] The cotton remained in the custody . . of the defendant until after the 27th September, 1865, when he refused to deliver it to the plaintiff, contending that he was discharged from all obligation to do so by the abolition of slavery in this State." Arbitrators were chosen, and decision was made in favor of the defendant on the ground [17] "that in consequence of the previous proclamation of the President of the United States, the negroes . . were free; that, therefore, the plaintiff had no title to convey—the consideration of defendant's agreement thus failing." Chancellor Carroll set aside the award: "the ground upon which the arbitrators have rested their award is a plain, palpable, and mischievous mistake of the law." [16] "the slaves within the State cannot be considered as having been emancipated *de jure* until after the surrender of the Confederate armies, under Generals Lee and Johnston, in . . April, 1865. . . [17] The territory of this State was occupied by the forces of the United States, and, by the direct interference . . of their military authorities, slavery in South Carolina was *de facto* abolished. This, it is conceived, is the emancipation of slaves recognized by the Constitution of this State, and no other, or earlier, emancipation."

Decree reversed: [22] "assuming that the arbitrators had misapprehended the law, [nevertheless, their] . . [23] award . . must be regarded as final" [Dunkin, C. J.]

Cureton v. Massey, 13 Rich. Eq. 104, November 1866. Will of Cureton, who died in 1858: [106] "In the division I desire that my faithful slaves, Cupid and his wife, and Charlotte, shall choose their master, and be allotted to whoever [*sic*] they may desire to live with."

Railroad Co. v. Partlow, 14 Richardson 237, April 1867. [239] "Levi (colored) had belonged to the defendant, . . [who] ordered five of them [in April 1864] . . Tear up railroad and throw the rails to hell. Defendant hid himself . . When passenger train went down they tore it up. . . One of the hands was a blacksmith, one a sort of blacksmith, and one a stiller."

Jackson v. Jennings, 13 Rich. Eq. 172, April 1867. [178] "if she had received him [in 1863], . . she would, about May 15, 1865, have been deprived of his services,"

Guerard v. Gaillard, 15 Richardson 22, November 1867. [24] "In the spring of 1865, Georgetown, with the surrounding country, fell into the hands of the United States troops. For some time, . . the country was in a disturbed condition—property more or less in the possession of the negroes."

Bradley v. Jennings, 15 Richardson 34, November 1867. "On or before the 1st day of January, 1847, we . . promise to pay . . thirty-one dollars, for hire of negro woman . . We are to find said negro with one woollen frock, two cotton frocks, three shifts, two pair good shoes,

one good blanket, one pair woollen socks, pay taxes, employ doctor, if necessary, and return said negro 25th December next. . . 1st January, 1846."

McKnight v. Gordon, 13 Rich. Eq. 222, November 1867. [224] "James . . was an apprentice in the blacksmith's shop of Mrs. McKnight." In 1855 Dr. Bradley hired two of her other slaves. "When the negroes came, James was with them. . . he had no work in the blacksmith's shop, and they [Mrs. McKnight and her son] thought they would put him with the carpenters." He was levied on and "advertised for the sales-day in December, . . bid off . . for nine hundred and twenty dollars,"

Rhame v. Lewis, 13 Rich. Eq. 269, December 1867. About 1858 [272] "his plans were to purchase negroes on credit at some estate sales, . . and send them to the West and sell them for cash,"

Pickett v. Wilkins, 13 Rich. Eq. 366, December 1867. [367] "These negroes were not made free by the President's proclamation, *in law*, any more than they were *in fact*, because the President had not the right to make them free. . . [368] Emancipation . . was, in fact, accomplished by the conquest of the country. Until that took place, slavery continued after the proclamation, just as it had existed before, and it ceased to exist in the different parts of the State as they fell into the hands of the conqueror. The proclamation was, in effect, simply an advertisement of what would be a certain consequence of conquest." [Lesesne, Ch.]

Blakely v. Tisdale, 14 Rich. Eq. 90, April 1868. "1822, Martin Staggers executed his last will . . and within thirteen days afterwards died, . . [91] He bequeaths . . to his brother, William . . five negro slaves: Hannah, Venus, Peggy, Phillis, and Merica, with their future issue and increase, to be his property during his natural life and . . after his death to be free to all intents and purposes whatever. The testator also devises one hundred acres . . to his brother . . during his natural life, and 'at his death to go to the five negroes aforesaid, to them and their heirs forever.' . . directs . . that one thousand dollars . . be placed in the hands of his brother . . during his . . life, and at his death to be paid to the five colored people . . share and share alike. . . William Staggers . . died . . August, 1862. The plaintiffs, Venus and Phillis, allege [in 1867] 'that Hannah, Merica, and Peggy, have long since departed this life, without any heirs except Peggy, who was the mother of one daughter, sold many years ago as a slave in Charleston, of whose whereabouts or whether she be alive or dead, the plaintiffs have now no knowledge;' and they pray partition of the land and the payment of the pecuniary legacy . . with an account for rents and interest . . from the death of William Staggers,"

Petition dismissed: [96] "The emancipation was a contingency intended to precede the vesting of rights in them, and as it did not take place at or before the termination of the life-estate, the contingent remainders were defeated." [Wardlaw, J.] A synopsis of slave legislation in South Carolina follows.

McLure v. Steele, 14 Rich. Eq. 105, April 1868. [108] "More than twenty years before the death of William McLure, his mother-in-law gave him a negress called Judy, retaining a child of hers . . then two or three years old. Judy very naturally 'made a fuss' about such cruel separation, and the old lady then said: 'Here, take this child along with you, I allow him for Robert,' (meaning William McLure's son, . . then an infant of tender years.)"

Laurens v. Read, 14 Rich. Eq. 245, April 1868. Will of Margaret H. Laurens, 1858: [246] "I give to my servant, Sarah, now about me, and fifteen years of age, one thousand dollars, to be vested in . . safe stock, and the interest to be paid her in quarterly payments, for her comfort and support during her life, and at her death to be equally divided among her issue alive at the time of her death. I . . appoint my friends, named as my executors, her guardians and trustees, and request them to aid and assist her in any way they can in her occupation and business; and I further direct that her taxes, doctor's bills, and professional advice . . be paid out of my estate. I direct that she be allowed to work out, and the wages she makes be applied to her support, and that of her children, should she have any, and that her children be placed under her care, and the profits of their work be applied to their support, and that they be put to trades as soon as they are old [247] enough, and any expenses incidental thereto to be paid out of my estate, and they be allowed to remove from the State should it be for their advantage to do so. Should I be removed before she grows up and is able to take care of herself, I direct that she be placed under the charge of my mother's waiting-woman, Mary Ann. I give to old Sue, the servant of my father and mother, fifty dollars a year, while she lives, to be paid to her monthly. I give to Mary Ann, fifty dollars a year, while she lives, and her time, and direct that she be allowed a little girl to wait on her and assist her while she lives—the fifty dollars to be paid to Mary Ann in quarterly payments." Mrs. Laurens [257] "owned . . ninety-six slaves,"

Tindal v. Tindal, 1 S. C. 111, April 1869. "the estate of the testator had become insolvent by the emancipation of his slaves,"

Floyd v. Abney, 1 S. C. 114, April 1869. "over $1,100 were given [in 1857] for . . one woman and two children. . . [115] diseased, . . he bought them as unsound, and at a low rate. When emancipated [by the government], the woman had three children."

Crosby v. Crosby, 1 S. C. 337, November 1869. [339] "when the ward was not at school, he worked for defendant [his uncle], with his negroes, as a common laborer, during every year from 1854 [when he was thirteen years old] to 1861;"

U. S. v. Anderson, 9 Wallace 56, December 1869. [60] "Anderson, a free man of color, possessed of real and personal property, by occupation a drayman and cotton sampler, and a resident of Charleston, . . preferred, . . 1868, to the Court of Claims . . a claim . . [61] that he had bought part of the cotton in the early part of the war, and the rest in the autumn of 1864, before the evacuation of Charleston . . that . .

March, 1865, the military authorities of the United States being now in possession . . he reported it to them, . . April . . it was removed, under their direction, from its place of deposit . . sold for the United States, . . net proceeds . . $6723. . . Anderson . . had never given any aid . . to the rebellion," Judgment of the court of claims in favor of the claimant, affirmed.

Miller v. Keys, 17 Fed. Cas. 328 (3 N. B. R. 224, quarto 54), 1869. " a petition by creditor for involuntary bankruptcy of the respondent . . the position was taken . . by the defense, that he had no status in court, on the ground that one [note] was paid, and the other was ' tainted with negro.' . . the last was given for the balance of a large transaction had about the commencement of the war, only a portion of which was negroes. His honor charged the jury that a note for negroes before Lincoln's proclamation took effect was perfectly valid,"

Walker v. Covar, 2 S. C. 16, April 1870. [17] " 4th March, 1861, the Sheriff . . sold . . [a woman] one of the mortgaged slaves . . for $1,120,"

Charles v. Coker, 2 S. C. 122, April 1870. [126] " Received, . . February, 1861, . . twenty-six hundred dollars, . . for . . Charlotte, about twenty-nine . . and her four children, . . about twelve . . about seven . . six . . and infant girl, about two months old."

Mobley v. Cureton, 2 S. C. 140, April 1870. In 1855 [141] " a large portion of the lands, consisting of several plantations and one hundred and twenty slaves, were divided between the widow and children, . . thirty-seven slaves, valued at from $20,000 to $25,000, . . remained in the hands of the administrators to pay debts."

Calhoun v. Calhoun, 2 S. C. 283, April 1870. In 1854 Floride Calhoun and her daughter Cornelia [284] " conveyed to Andrew P. Calhoun the Fort Hill plantation, . . containing eleven hundred and ten acres, fifty negro slaves, and all the personal property on the plantation, with certain specified exceptions, for . . forty-nine thousand dollars. And, in payment of the same, they took the individual bond of Andrew P. Calhoun, . . the whole amount to be paid in fifteen years, from the first day of April, 1854, . . [285] in the trade, the plantation was estimated at fifteen thousand dollars, the fifty negro slaves at twenty-nine thousand dollars, . . in March, 1865, Andrew P. Calhoun died intestate, . . And his son, John C. Calhoun, administered upon his estate, which, like that of many others, was almost entirely swept away by the results of the late war; "

Held: the administrator was entitled to no abatement because of the emancipation of the slaves. [306] " the contract . . is consistent with the public opinion which prevailed in South Carolina when it was entered into. . . For upwards of two centuries slavery existed in South Carolina, owing its origin to no statutory provisions, . . [307] It existed as a common law institution . . Although . . not recognized by the common law of England, . . it lawfully prevailed in her American colonies." [300] " The 10th Section of the 1st Article of the Constitution of the

United States declares 'that no State shall pass any law impairing the obligation of contracts.' . . It is the State, no matter by what body represented, which is subjected to the restraint." The thirty-fourth section of Article IV. of the South Carolina constitution of 1868, declaring void all "contracts, . . the consideration of which were for the purchase of slaves," and providing that no suit shall be prosecuted for their enforcement, is void.

Bailey v. Railroad Co., 2 S. C. 312, November 1870. [313] "the plaintiff made a contract with the . . Railroad Company to furnish [twelve] persons to labor [from July 1, 1864, to April 30, 1865.] . . the defendants *claim* that the said persons were free from January 1, 1863, . . and, therefore, they are not indebted to the plaintiff"

Held: [314] "the defendants are liable . . whether the said laborers were or were not slaves."

Rosborough v. Rutland, 2 S. C. 378, November 1870. Will of Rosborough, who died in November 1860: [380] "to . . Rutland . . $2000 . . in trust for certain of the slaves . . gives certain directions as to the kind treatment of the slaves intended as the objects of his bounty" Held: [386] "this Court is not at liberty, under the Act of 1841, to enforce the provisions of the will as to the legacy" [Willard, J.]

Cattel v. U. S., 6 Ct. Cl. 278, December 1870. [279] "The claimant was a colored drayman residing in Charleston during the rebellion. At the time of the capture of the city he owned three bales of cotton. . . [280] The judgment . . is, that the claimant recover . . $134 70 a bale,"

Brewster v. Williams, 2 S. C. 455, April 1871. On January 17, 1865, "the plaintiff sold to the defendant two slaves . . 'Six months after peace is declared . . I promise to pay . . Five Hundred Dollars in species or its equivalent,'"

Bulow v. Witte, 3 S. C. 308, April 1871. Will, 1840: [309] "gave his . . plantation . . with about two hundred negroes," By 1857 "they had not increased, and . . the crops were deficient. . . [310] sold one hundred and seventy . . on the 10th and 31st January, 1860, . . [311] reserved twenty negroes to remain upon and cultivate the provision land . . increased to twenty-three, . . sold . . the negroes at public sale [May 1862], for $7,215, . . Payment was made in Confederate Treasury notes."

Hinton v. Kennedy, 3 S. C. 459, November 1871. Will, 1855: [480] "He directs his young negroes to be kept on one of his plantations, and empowers his executor to 'hire out all his negroes not expressly excepted,' and 'to sell any of them that are turbulent or otherwise troublesome.'" [461] "The testator . . had . . about 135 slaves; . . very much involved in debt, . . [466] hire of negroes for 1860 [1859?] and 1861 [1860?] . . amounted to $6,000." [462] "in 1865 the slaves were emancipated and . . the real estate . . depreciated thereby, so that the assets are insufficient to pay . . debts." Carroll, Ch.: [481] "The

insolvency . . must be attributed to the emancipation of slaves, with its direct consequences—the fearful depreciation of other forms of property and the general ruin of debtors."

Blease v. Pratt, 3 S. C. 513, April 1872. "note . . for $2,250 . . dated 15th September, 1863. The consideration was a slave" Held: no failure of consideration.

Russell v. Cantwell, 5 S. C. 477, November 1874. "action, for malicious prosecution, . . the defendant commenced a prosecution [July 1864] against the plaintiff [slave], before the Mayor . . for stealing some gold and silver coin. . . evidence being very slight, the plaintiff was discharged. . . The jury found for the plaintiff [in the present case] $800."

Motion for a nonsuit, granted: [478] "To permit those who were slaves . . to bring actions . . for . . injuries committed against them during the existence of slavery, would open the door to a flood of litigation . . disastrous to all classes" [Wright, J.]

De Saussure v. McClenaghan, 6 S. C. 83, November 1874. "September, 1861, the Ordinary . . made an order for the sale of the slaves,—of which the estate almost wholly consisted,—for one-sixth cash and for the balance on a 'credit of one, two and three years,' . . [84] October, . . the sale was made . . realized $6,482.81. . . all [notes] collected except three, each for $318."

Grier v. Wallace, 7 S. C. 182, November 1875. "in 1846 . . Whitesides purchased . . John [and four other slaves] . . at . . $1,750; . . paid in cash part . . that or the next year he sold Julia Ann and Agy, and in 1857 or 1858 he sold John for $1,200 cash; . . 1858, Whitesides made a payment on the note given in 1846, took up the same, and gave the note, with the defendant as his surety." When sued, in 1875, the defendant gave evidence "that John and Julia Ann were unsound at the time of the purchase;"

Held: [184] "Whitesides is estopped now from inquiring into the condition of the slaves at the time of their purchase . . the surety must be held bound."

TENNESSEE.

INTRODUCTION.

I.

Tennessee took just pride in her humane enactments and decisions in favor of the slave, going even further, in some respects, than North Carolina, her mother state.

1. In Vaughan *v.* Phebe [1] it was decided, in 1827, that evidence that Phebe "was always said to be of Indian extraction," that her mother "was always called an Indian by descent," that deponent "had often heard that . . [Phebe's great-grandmother] was always reputed an Indian, and was free" was admissible. And in Miller *v.* Denman,[2] decided in 1835, Judge Green, while admitting that the case of Vaughan *v.* Phebe "extends the right to introduce hearsay evidence to the utmost limit, and further than other courts of high authority have gone," declares that the Supreme Court "will not now disturb" that principle.

2. The legislature of Tennessee, in 1833,[3] and her Supreme Court, repeatedly,[4] recognized the right of a slave to make a contract for his freedom. In 1871, the Supreme Court capped the climax by the astounding opinion, delivered by Judge Nelson, "that a marriage between slaves, with the assent of their owners, . . was always a valid marriage in this State, . . not [however] followed by all the legal consequences, resulting from the marriage of white persons." [5]

3. The Tennessee decisions develop the theory of the twofold nature of emancipation, requiring both the assent of the master and the assent of the state.[6] After the assent of the master had been given according to the statutory requirements, he could not withdraw it, and though the slave did not become free till the assent of the state was given, he ceased to be under the dominion of his master. The status of "*quasi* slave" had no terrors for the logicians on the Tennessee bench, though scornfully rejected as impossible by those of other states.

[1] P. 492, *infra*.
[2] P. 502, *infra*.
[3] Act of 1833, ch. 81. Car. and Nich. 279.
[4] Greenlow *v.* Rawlings, p. 514; Ford *v.* Ford, p. 530; Lewis *v.* Simonton, p. 534; Bedford *v.* Williams, p. 585, *infra*.
[5] Andrews *v.* Page, p. 592, *infra*.
[6] Fisher's Negroes *v.* Dabbs, p. 499; McCullough *v.* Moore, p. 504; Greenlow *v.* Rawlings, p. 514; Hinklin *v.* Hamilton, p. 517; Lewis *v.* Simonton, p. 534; James *v.* State, p. 538; Laura Jane *v.* Hagen, p. 542; Isaac *v.* Farnsworth, p. 574; Jameson *v.* McCoy, p. 593, *infra*.

4. On the subject of emancipation, the policy of Tennessee, says Chief Justice Nicholson, in 1871,[7] "was marked by great liberality until the year 1831, when the public mind began first to be agitated by discussions in the Northern States of the question of abolishing slavery . . A more rigid policy commenced in 1831, when it was enacted that no slaves should be emancipated except upon the condition of removal from the State.[8] This policy was based upon the belief that the peace of the State would be endangered by an increase of the number of free colored persons." The act of 1833[9] exempted from this requirement "any slave or slaves, who had *bona fide* contracted for his, her or their freedom, previous to the passage of said act . . and all cases of emancipation by will or devise made by persons who died previous to the passage of the act of 1831." The act of 1842[10] extended the exemption to "any slave . . emancipated in this State, agreeably to the laws now in force," and to "any free person of color . . [who had] removed to this State, previous to . . January, 1836," who, on petitioning the county court, satisfied that court that the petitioner was "of good character, and ought to be permitted to reside in the county" "in which he . . is residing, or may wish to reside," but not in any other county. The act of 1849 provided for immediate removal;[11] the act of 1854,[12] "that hereafter all slaves in this State, acquiring a right to freedom, whether by contract or will, shall be transported to the western coast of Africa, . . Provided, that nothing in this act contained, shall be so construed as to apply to those who from age or disease are unable to go with safety."

5. Slavery was abolished in Tennessee on February 22, 1865,[13] by two amendments of the state constitution.[14]

II.

In 1809 the superior courts of law and equity, provided for by the General Assembly in 1796,[15] were abolished,[16] and a supreme court of errors and appeals was established,[17] composed of two judges in error

[7] Jameson *v.* McCoy, 5 Heiskell 108 (118).
[8] Act of 1831, ch. 102, sect. 2. Car. and Nich. 279.
[9] *Ibid.*
[10] Ch. 191, sect. 1. Nicholson's St. L. 168.
[11] Pamphlet Acts 300.
[12] Acts of 1853-1854, pp. 121, 122.
[13] Gholson *v.* Blackman, p. 583, *infra*. The deed of cession by North Carolina to the United States, of the territory comprising the later state of Tennessee, provided "That no regulations made or to be made by Congress, shall tend to emancipate slaves;" (1 St. at L. 108). Tennessee is not one of the states "designated" in the Emancipation Proclamation, within which the slaves are declared free.
[14] Art. I., sects. 1 and 2. Rev. Code (1871), I. 201.
[15] Ch. 1, sect. 1. Scott's *Laws of Tenn.* (1821), I. 545.
[16] Ch. 49, sect. 22. *Ibid.*, p. 1154.
[17] Sect. 23. *Ibid.*, p. 1155.

and one circuit judge who should sit in the supreme court held for a different circuit from his own.[18] The act of November 19, 1811, provided that the circuit judges should cease to sit in the supreme court;[19] and that of October 11, 1815, added a third supreme judge.[20] The number was raised to five by an act of 1824,[21] but reduced to three in 1827.[22] The constitution of 1834 continued the latter number;[23] that of 1870 restored the former.[24]

[18] Sect. 25. *Ibid.*
[19] Ch. 72, sect. 16. *Ibid.*, II. 39.
[20] Ch. 70. *Ibid.* 211.
[21] Ch. 14, sect. 1. Hayw. and Cobbs 170.
[22] Ch. 79, sect. 1. *Ibid.* 171.
[23] Art. VI., sect. 2. Car. and Nich. 55.
[24] Art. VI., sect. 2. Rev. Code (1871), I. 102.

Greer v. Emerson, 1 Overton 13, November 1801. "The defendant was employed by the plaintiff, and lived with him as an Overseer. The Plaintiff being from home, the defendant ordered a negro the property of the plaintiff, to catch a horse and go with him to the race paths. which were in the neighborhood, for the purpose of straining the horse and ascertaining his speed. The negro . . started the horse, the defendant being present. The horse flew the way, threw the negro, and killed him. . . [14] Verdict for the plaintiff, for $350. Rule for a new trial, which was discharged."

Ingram v. Cocke, 1 Overton 22, September 1804. In 1785 [23] "Rains owed . . M'Donald three negroes, . . Rains . . was about to abscond—Ingram . . [M'Donald's] Agent . . threatening to shoot, forced him to stop . . Immediately after which, Ingram got into his possession four negroes, the property of Rains, . . the proof . . formed a presumption irresistibly strong, that Ingram procured the negroes by menaces and duress. . . the fourth was a charge for trouble Ingram had been at in collecting M'Donald's debt. . . A short time after this, Rains went to M'Donald's and discharged the debt . . by a payment in horses, . . and some money."

Sample v. Looney, 1 Overton 85, November 1804. "Milly . . was sold by . . Mr. Milton to the plaintiff. . . Milton's wife, and perhaps others of his family, told the plaintiff, that the girl was subject to convulsion fits: they appeared to be attached to her, and used persuasions with Milton not to sell the girl, an [on ?] account of her infirmity. Robertson . . then advised [Milton] . . not to ask . . a full price for her, as he might bring himself into trouble in future. The plaintiff was present . . [86] but still persisted in endeavoring to purchase the girl which he did for much less than negroes of her appearance and age usually sold for. The plaintiff then sold the girl to the defendant, being in his boat, on his way to the Natchez, for . . 337 1-2 dollars, a full price, to be paid upon Looney's return. The plaintiff . . represented her to be sound and healthy, . . Price . . proved that . . the plaintiff . . told [him] . . that Milly had fits after he purchased her and that he had sold her to the defendant as sound; but as he was going to the Natchez he could make his own out of her, and requested the witness not to say anything about it. . . [89] Verdict for the plaintiff, damage seventy dollars."

Ragan v. Kennedy, 1 Overton 91, March 1805. "The sheriff sold the negro [girl] . . for . . $139 51 . . February, 1802."

M'Farlane v. Moore, 1 Overton 174, September 1805. "M'Farlane, had purchased a negro woman of the defendant, for a full price and took a bill of sale warranting the property of the negro. . . the negro had been in a sickly state before the plaintiff purchased her; and that the defendant knew . . Doctor Irvin . . had been called to the negro soon

after the plaintiff purchased her; that he found her in such a state, occasioned by the improper administration of Mercury, that he thought her incurable and that the complaint had been of considerable standing, that the woman afterwards died. . . verdict for the plaintiff." Rule for new trial, discharged.

Hooper v. Hooper, 1 Overton 187, November 1805. Detinue. The defendant said [188] "that he had got the mare of his son, and had given him the negro boy . . for her. The son was about fifteen . . The son intermarried with the plaintiff. . . The mother of the plaintiff . . a little time before the marriage . . observed [to the defendant], that she thought it would not do; that her daughter had not been accustomed to hard work, which she thought was the case with his son; . . upon which the defendant observed that his son had the negro boy . . and that he with his son could work; . . after his [son's] death, the defendant got possession of the negro, . . [189] Verdict, $600, the value of the negro; and $440 25, damages, for detention."

State v. Doherty, 2 Overton 80, September 1806. Mary Doherty "appeared to be between 12 and 13 years of age. Upon being arraigned [for the murder of her father], she stood mute. . . [81] When [the jailer] . . heard her speak, it was to a black girl of Mr. M'Allister. Had lately seen the negro girl try to get her to speak, but she did not. . . [82] the former jailer . . never heard her speak but once, and that was to the negro girl . . Once he saw her smile when the black girl was dressing her."

State v. Thompson, 2 Overton 96, November 1807. "Indictment for taking with force . . a negro woman from . . Deadrick . . [who] had possession of the Negro in . . Nashville. . . [97] The defendant went to a house, where there were negroes, returned, and in passing along the streets, fell in with the negro woman coming from the spring. The defendant had horsemans pistols. He told the negro, she was his property, and that she must go home with him [[96] 'about 4 miles from Nashville']. The negro seemed opposed to going, though no violence was used. . . the negro was made to sleep up stairs. . . [98] Overton, J. . . It is of the first moment, that this species of property should be inviolably guarded from the control of others than their master. They differ from all other kinds of property; they have reason and volition. . . [99] it should not be a matter of inquiry with the court, whether the negro was willing to be taken or not. Verdict for the state, . . the defendant . . was fined only."

Cheatham v. Haley, 1 Overton 265, May 1808. "no warranty as to the health of the slave. It was proved that she was a fool, and that the defendant knew it before the sale. . . Verdict for plaintiff."

Looney v. Pinckston, 1 Overton 384, April 1809. "Kincaid, gave his writing obligatory dated . . October, 1804, to the defendant for $300, which might be discharged in a likely, healthy, sensible, and well grown negro girl, over fifteen . . and under twenty, clear of any impediment, against the first day of March ensuing; . . January, 1805, the defendant assigned said covenant . . for value received."

Clarissa[1] *v. Edwards*, 1 Overton 393, May 1809. "an action of assault, battery and [false?] imprisonment. Plea, that the plaintiff was the defendant's slave. The plaintiff was a person of colour, and the object . . to recover freedom. . . in the county court of Rutherford, . . there was a verdict for the defendant. An appeal to this court. . . [394] The sale to the defendant was alledged [*sic*] to have taken place in Virginia. . . [395] insisted by the plaintiff's counsel, that this woman's colour was presumptive evidence of freedom, and cited Tay. Rep. 164. The defendant proved, that this woman was in the possession of a person . . who came from some of the West India islands, to Alexandria, in Virginia. . . he had several persons of colour, of whom the plaintiff was one, all of whom the deponent conceived were slaves. The plaintiff's counsel offered to prove, that the woman had frequently said she was free, and these conversations had been often repeated since her first coming into the country."

"*Per Curiam.* As an act to rebut the idea of acquiescence, this evidence is proper, but cannot be received as creating evidence for herself. Other evidence was offered on both sides, . . verdict for the plaintiff."

Preston v. M'Gaughey, Cooke 113, June 1812. In January 1793 M'Gaughey sold 1400 acres of land to Preston "for the sum of forty-five pounds, . . the payment of which . . [was] received in a negro girl named Milly, about twelve years old; but in case the title of the land should fall through . . the said M'Gaughey shall deliver up the said negro;" Milly "was delivered up to M'Gaughey, and remained in his possession for several years, during which time she had three children. The land . . was ultimately lost, but after the children aforesaid were born, and after one of them had been sold"

Held: [114] "it was a conditional sale . . M'Gaughey is no more entitled to the issue of the negro woman, born while he had her in possession, than if he had hired her for one year."

Appleton v. Harwell, Cooke 242, August 1812. "hired . . a negro man [represented to be sound] . . for . . $47, . . he was . . afflicted with a sore leg, . . returned . . [243] placed under the hands of a physician, by whom his leg was measurably cured, but . . [the hirer] refused to receive him again,"

Edwards v. M'Connel, Cooke 305, February 1813. "action of detinue brought by the appellant to recover . . a negro boy named Seac. The defendant in the court below plead that the negro boy was free, . . 'The plaintiff gave in evidence a bill of sale . . for the negro boy . . and his mother Clarissa; . . that he is of a *deep yellow* color. The defendant gave in evidence the following instrument . . 'I William Edwards . . relinquish all claim to a yellow boy named Seac, . . on the principle of his being free, . . 1809.' . . also . . a record . . of a suit brought by Clarissa,[2] the mother of Seac, against the plaintiff, for her freedom, which she obtained. . . [306] on the trial mentioned . . a decree of the French

[1] See Edwards *v.* M'Connel, *infra.*
[2] Clarissa *v.* Edwards, *supra.*

convention was given in evidence, by Clarissa, which . . abolished slavery in the West India Islands. . . Mr. Jones . . deposed that in 1795 he was in the Island of Guadaloupe, and that all persons there at that time were free . . Mr. Yell had deposed that before the year 1794 he was in the Island; and that the greater part of the persons of her color were free. But there was no proof that Clarissa was ever on the Island, except what might be inferred from her *speaking French*; being a *good seamstress*; and having . . letters written by the captain of a trading vessel, whom she stated was her husband, dated about twenty years ago. . . The counsel for the defendant gave in evidence the decree, dated the 25th day of March 1794, . . The plaintiff then gave in evidence, a decree of the Consular government of France, re-establishing slavery in the West India Islands, dated the 17th day of May 1802, upon the same footing as it was in 1789. . . At the date of the decree abolishing slavery, and the promulgation thereof in July 1794, the Island was in the possession of the English. The court, in charging the jury, stated that the record of Clarissa's freedom, *was conclusive evidence to prove, that her child, born after the period her freedom commenced*, was free, although that were before the commencement of the suit she brought against Edwards. . . It was proved that the boy, at the time of the present trial, was about sixteen years old." Verdict and judgment for the appellee.

Judgment reversed: [313] "the time when Clarissa's freedom commenced, does not appear from the record; and consequently it is no evidence of that fact, . . In other respects the Circuit Court was correct."

Stump v. Roberts,[1] Cooke 350, June 1813. [351] "1808 . . Roberts, . . Nashville, wrote to his father, who lived near Lexington in Kentucky, to send him Dave to assist him in making powder;"

Craig v. Estes, Cooke 381, August 1813. In 1810 a child, born after 1794, was sold for $312.50.

Lewis v. Cooper, Cooke 467, February 1814. In 1781 [471] "the girl was sold for 25,000 *l.* North Carolina money,"

Brice v. State, 2 Overton 254, May 1814. "Brice was indicted, convicted and sentenced . . for having stolen a negro slave."

Judgment affirmed: the act of North Carolina, passed in 1779, upon which the indictment was framed, is in force in Tennessee. [260] "The defendant was afterwards executed."

Netherton v. Robertson, 3 [2] Hayw. Tenn. 29, November 1816. "debt upon a bond, to deliver a negro . . on or before the first of April, 1788. . . [30] the obligee . . informed him, that a negro had been paid in part, and that £25 remained still due."

Jones v. Harrison, 3 Hayw. Tenn. 92, November 1816. "The plaintiff was entitled at the death of his mother, by will made in 1765, to the negro . . with others, which, on her death, the defendants removed from Virginia to this state. The plaintiff sued . . for these negroes, and during the pendency of the suit, they caused the negro [in question] to be sold

[1] Also in Brun. Col. Cas. 224.
[2] Haywood, vols. 1 and 2, are North Carolina Reports.

to satisfy a debt recovered against the plaintiff, whereupon the plaintiff sued by this bill. . . the value of the negro sold, was at the time of the sale, . . 275 dollars, . . at this time . . she is worth 375 dollars."

Held: [93] "the plaintiff . . must . . take the value . . at the time of . . the decree. . . the increased value . . is a loss which must fall on . . the defendant"

Coleson v. Blanton, 3 Hayw. Tenn. 152, December 1816. "deed of trust from Richard Blanton and Philip Vaughan [of Virginia] to Charles Blanton, the plaintiff, . . 1791, . . negroes were conveyed 'to . . Charles . . to the use of . . Philip, until William . . [153] son of Philip . . shall attain . . twenty-one . . or marry,' . . 15 or 20 years ago, Philip . . sold [Hagar, a child of one of the negroes,] . . to Logan, . . in North Carolina." Tate "understood his father got her from Logan." Tate's "father had sold the negro . . to Coleson . . 15 or 20 years ago; . . [154] It does not appear when William Vaughan married or attained 21."

Held: [159] "The Court cannot therefore determine whether the plaintiff be barred or not," [157] "If the owner re-take the property peaceably after three years, . . he is not bound to part with [it.][1] . . It is a question whether a removal of the property to a distance . . concealing from the plaintiff . . where it is . . will excuse the plaintiff from commencing his action within the prescribed time. . . [159] judgment [for Blanton] set aside and the cause remanded," [Haywood, J.] [Mart. and Yerg. 429] "The cause was again brought before the Supreme Court . . in 1825, and was adjudged for the defendant [Coleson], because the replication, that plaintiff did not know where his property was, . . was holden bad, and the suggestions reported in 3 Haywood, were overruled."

Read v. Staton, 3 Hayw. Tenn. 159, December 1816. [161] "The girl was dumb or nearly so. . . about 10 or 11 when purchased [in 1812]. Her price 160 dollars."

Morris v. Gilliam, 3 Hayw. Tenn. 165, December 1816. [166] "April 1806, . . Gilliam, came out with a negro of his father's and lived that summer with his brother . . in said cabin, and made corn there,"

Myrick v. Boyd, 3 Hayw. Tenn. 179, January 1817. In 1801 Myrick "delivered to him a negro girl . . 11 or 12 years old, at the price of 250 dollars, . . her full value at that time; . . An absolute bill of sale was given . . but Mrs. Myrick appearing unwilling to part with her, Myrick proposed redeeming her by giving another of equal value, or paying 250 dollars [later] . . to which Boyd assented."

Kennedy v. Woolfolk, 3 Hayw. Tenn. 195, February 1817. In October 1797 he "gave another bond for eighty pounds or a negro boy;"

M'Cutchin v. Price, 3 Hayw. Tenn. 211, February 1817. "The bill states the bequest of certain negroes by M'Cutchin[2] . . to his wife . . for

[1] A mere *dictum.* "No such question was involved" [Catron, J., in Kegler *v.* Miles, Mart. and Yerg. 429.]

[2] See p. 497, *infra.*

her life; and then said negroes to be liberated. . . That Price intermarried with the widow, . . The bill is founded upon the idea that the gift of freedom is void; . . that the next of kin are entitled in remainder, . . The evidence is, that Price said he would sell the negroes particularly when drinking. Some of the witnesses advised him to do so; one of them says, Price told him he would take them down the river and sell them, and applied to the witness to aid in confining them for that purpose. . . [212] Price is often intoxicated, and in that situation, is easily prevailed on to do whatever is recommended to him."

Held: "A testator may direct that the executors shall endeavor to procure the emancipation of his slaves; and if the executor can do so, then all claims founded upon the legal impossibility of doing so, vanish. But if the attempt fail, then their claims are valid. The possibility is such an interest as the law will . . protect. . . Decree that the clerk and master report to-morrow morning the value of said slaves and their increase, and that . . Price, shall give security . . in a bond . . with condition . . that he will not remove said negroes . . [213] beyond the bounds of this state, nor otherwise dispose of them, so as to impair the interests of those in remainder; . . Kinnard . . only hired negro Jack at 50 dollars per annum,"

Hicks v. Parham, 3 Hayw. Tenn. 224, February 1817. "The bill states that the defendant hired a negro to the complainant for a year and took his bond for the hire; that in one month the negro died; that he tendered . . satisfaction for one month's services which he refused, but sued upon the bond and recovered. Upon this bill an injunction was granted."

Injunction dissolved: [228] "the temporary owner . . is subject . . to all the casualties . . so far as his interest reaches, unless there be stipulations in his favor to the contrary."

Young v. Forgey, 4 Hayw. Tenn. 10, May 1817. "Forgey, at the instance of Henderson, purchased [in February 1805] at execution sale, a negro man, whom the sheriff sold to satisfy a debt due from Henderson, advancing for him . . 284 dollars. Articles were drawn purporting that the money might be repaid in April, May or June next following, and that the negro might be retained till . . October, . . In March 1806, an addition was made . . signed by Henderson, declaring that the death of the negro should be the loss of Henderson. In 1807, the knee of the negro being affected with rheumatic pains, a plaister, by the direction of Forgey, was applied to his knee, which produced excoriations and sores, that finally eventuated in death . . 1809. After the application being unable to labour, and growing worse every day, and being not furnished by Forgey with medical aid, one of the witnesses understanding from Forgey, that the death of the negro would be the loss of Henderson, requested that Forgey would send the negro to his house to be . . taken care of. He came 8 or 10 days afterwards, and after staying one or two days, was removed in a cart or waggon to . . Youngs, where were his children, and he there remained. In December 1807, . . Young purchased the negro from Forgey, who affirmed, that Henderson was bound

. . to pay the 284 dollars; that the death of the negro would be Henderson's loss, and that . . Young should have the benefit of these articles. . . Young . . gave his bond for the 284 dollars,"

Held: [14] "Forgey and not Young should bear the loss." [12] "If he [Forgey] had sued Henderson, he could not have recovered, for he would have been met with the objection, of a noxious administration of medicine which ruined the pledged property. . . the temporary owner shall be operated [*sic*] with the care of preserving the life . . of the slave committed to his charge. . . The evils to be apprehended from a different rule will be prevented . . the slave will not be wantonly exposed to hardships which generate disorders. He will be furnished with food and raiment needful to such preservation and cruelties which force him to absent himself will not be practiced upon him." [11] "It is because of this obligation of the temporary owner, that the price fixed for a year, is not much, if at all greater, than the half of the price given for the work of a day labourer, for whom the employer is not bound to provide."

Cunningham v. Shields, 4 Hayw. Tenn. 44, May 1817. "Shields . . was possessed of a number of negro slaves, and in his will, directed them . . to be sold for the payment of his debts, and the education of his children, . . At the sale or distribution, B. Shields, the defendant, became entitled to a negro boy Charles, then about 10 years of age. He and his brothers agreed between themselves, that if the slaves . . should behave well, they would each emancipate those they had got, at the age of 31 or 32. When Charles was near 30 . . he absconded from the service of his master, who suspected that his absence was with the knowledge of Reuben Charles. This suspicion probably was not without foundation, . . In this situation, Shields agreed to sell the negro [to Reuben Charles] for $250, about half his value, and Charles to take his chance of getting him; . . March, 1813, a bond was executed to Shields, by Charles, with Cunningham and Harris sureties, . . [45] And Shields gave a bill of sale for the negro for life. On this bond suit was . . prosecuted to judgment. . . after suit and before the judgment, [Reuben Charles] . . was obliged to run away on account of his crimes. Cunningham has filed his bill to be relieved from this judgment, and charges that the negro was sold as a slave for life, when he was entitled to his freedom in a short time. . . Shields . . insists that the negro is a slave for life, and . . the fact appears to be so. . . [46] on the very day of the sale, or before the parties had all separated, one of his [Cunningham's] own witnesses deposed, that he said to Shields, that he had *fixed himself by selling a free negro*. From this circumstance it appears as probable, that Charles and Cunningham had combined to over-reach Shields, as that Shields and Harris had privately agreed to defraud Cunningham." [Roane, J.] Bill dismissed.

Wilson v. Carver, 4 Hayw. Tenn. 90, June 1817. "350 dollars . . for a negro man . . [91] hired the negro . . at ten dollars per month."

Renney v. Field, 4 Hayw. Tenn. 165, August 1817. "In May Term, 1817, a *Habeas Corpus* issued to . . Mayfield, from a judge of the cir-

cuit Court, to bring before him the body of Rebecca Renney . . Mayfield brought her before the court . . and returned . . 'That on the day on which the annexed bill of sale bears date, he received . . possession of . . Rebecca Renney as his slave, . . That he holds said slave as his property, as he thinks he lawfully may: until by a solemn adjudication and trial by jury of the claim set up by said Rebecca to her freedom the same is decided,' . . The bill of exceptions states an offer on the part of the plaintiff to prove her freedom by evidence, which the court rejected, and refused to set her at liberty, on the ground that an action of Assault and Battery is better calculated to try the right of freedom and slavery."

Judgment affirmed: [167] "It is urged that the colour of the plaintiff, she being of an olive complexion, with straight black hair and eyes, raises a presumption in her favour. These circumstances are not in the return. . . [168] In all matters of fact . . where the common law requires an investigation by jury, we should proceed . . by a jury. . . The law has provided her with divers means, for the procurement of her liberty, if she be entitled to it. She may sue for a false return, . . Or she may bring trespass, for assault and battery and false imprisonment, . . If there be any danger of removal by the owner, a Judge . . may order a sheriff to . . hold the plaintiff in his custody . . If the plaintiff want testimony and can give security for returning to the master in case of a verdict against her, the court will order . . [169] that the plaintiff be permitted to go in search of testimony. . . And we do not doubt, that in some cases . . a bill in equity will lie for the same purposes. . . These are the provisions made by our practice for these unfortunate persons. They manifest the clemency of our laws towards them. The remedy is continually improved as emergencies present themselves, . . There is no call therefore for a departure from the ancient rules of law, in cases of *Habeas Corpus*. . . [170] very applicable . . to the case of free persons, acknowledged to be so, and *illegally* confined, but not applicable . . in cases where the plaintiffs are held as slaves: . . The applicant was correctly remanded . . to the custody of the defendant until a fair trial by Jury could be had."

Westmoreland v. Dixon, 4 Hayw. Tenn. 223, December 1817. "Shelton, . . in . . Virginia, . . February 1813, . . sold the balance of his hogs to . . Whitehead, and received in part payment a negro fellow about 30 or 40 years of age, at . . 295 dollars. Shelton immediately . . set out upon his return to this state; and after one day's travel, sold the said negro to the complainant . . in the county of Brunswick [Virginia], for 295 dollars: . . assigned the bill of sale from Whitehead . . About five days after . . the negro had a fit. On the 20th of March . . [224] he had another, being the first day of his journey from . . Virginia, to the county of Davidson in this state, . . The . . negro lived with . . Abernathy . . until the fall of . . 1813, during which time he had fits frequently of a dangerous kind, subjecting him to fall into the fire and be burned. . . in working with the negroes . . he did not keep his corn row, but would work out of it, in half a dozen hills, into another row. That in the fall when the complainant moved to Davidson, he was worth

nothing. . . The complainant in February 1814, went to . . Shelton's house, for the purpose of getting him to take the negro back. The negro was not present, having been too badly burned to be taken along. It was in proof by the testimony of one witness, that Shelton . . admitted, that he did sell the negro . . as a sound, healthy, corn field negro. . . expressly denied by Shelton, in his answer . . April . . the . . negro was offered to be returned to Shelton at his father's distillery, who refused to receive him. The negro was left there against the will of Shelton, who ordered him to go away, which he did. . . this bill is brought to have the price refunded to the complainant."

Bill dismissed: Shelton's [227] "sale of the negro after owning him only 24 hours, . . seems to preclude the knowledge of the unsoundness"

Russel v. Lanier, 4 Hayw. Tenn. 289, March 1818. "Claxton was possessed of certain negroes, and being indebted to divers persons, conveyed them to . . Lanier, reserving to himself an estate for life. . . both removed to this state from North Carolina."

Keeble v. Cummins, 5 Hayw. Tenn. 43, March 1818. The father of the complainant, [44] "being in his dotage and possessed of very little property except six slaves [[45] 'Baldy, Sukey and their four children'] . . worth at least 1400 dollars, was induced by the slaves to express a desire of liberating them. . . Cummins . . offered to aid him . . . He proposed that the negroes should be conveyed to himself: that W. Keeble, senior, might keep possession of them during his life, and after that period, that he, Cummins, would liberate them. . . 1813, the defendant procured separate bills of sale . . and . . signed . . an agreement . . 'I promise to pay . . one thousand dollars in produce; . . in money if I see cause,' . . The complainant . . obtained judgments against [his father] . . and procured executions to be levied on the negro woman and her children; but before the day appointed for the sale, the defendant got possession of them,"

State v. Jones, 2 Yerger 22, May 1820. "an indictment for harboring a slave,[1] . . 'who was then runaway' . . The defendants . . were found guilty . . Judgment" Reversed: the indictment must aver that the harboring was without the consent of his owner.

Porter v. Armstrong, 2 Yerger 74, November 1820. [76] "suffered [the negro] . . to remain . . to assist him in clearing a piece of new ground;"

Allen v. Scurry, 1 Yerger 36, January 1821. Held: a remainder in a slave cannot be levied on and sold by execution.

Merril v. Johnson, 1 Yerger 71, January 1822. Milly "had three children, . . which he sold . . (except Dinah.)"

Gordon v. Farquhar, Peck 155, June 1823. [155] "the defendant met with the slave, who was absent under a pass or permit from the plaintiff, who claimed to be the owner under a purchase at sheriff's sale, and

[1] Act of 1806, ch. 32, sect. 4.

claiming an interest in the slave under a deed of trust, . . held by Tubb, as trustee, he directed the slave to go to Tubb,"

Held: "The words 'under any pretence whatever,' in the act[1] . . [156] are referable to the harboring, not to the words 'entice from the service of the owner;' this latter sentence means an acknowledged owner, not one whose claim is opposed by that of the defendant by virtue of another claim of his own." [Haywood, J.] Overruled by Marshall *v.* Penington, p. 503, *infra.*

Greer v. M'Crackin, Peck 301, May 1824. Will of John M'Crackin, 1820: [302] "that my negro girl, Spice, shall be set free, at the age of thirty-five, if my wife . . should die before that time, if not, to serve to her mistress's death, and then to be free, by giving sufficient security, and if Spice should have any children they are to be set free at the age of twenty one;"

Pursell v. Archer, Peck 317, May 1824. "Pursell sued Archer . . for slanderous words, . . [318] 'you are the rascal that wrote Mrs. Tadlock's negro's pass, and persuaded him to runaway,' . . verdict and judgment . . for the plaintiff;"

Affirmed: [319] "the words . . being malicious, are such as will maintain the action; for to forge a pass for the negro of another, and to persuade him to runaway, is an indictable offence,"

Childs v. Derrick, 1 Yerger 79, July 1824. "conveyed . . to his kinsman . . a slave . . to prevent his being sold to pay his debts."

Hope v. Johnson, 2 Yerger 123, January 1826. Will of David Beatty: "I will . . that the plantation I now live on be sold . . and the proceeds . . laid out in land in the Indiana Territory, as well situated as can be procured, and the right thereof vested in my negroes, . . (naming them,) . . with their increase, to whom I give their entire freedom, and the settling of them on the above named land, under the direction of my executors," The county court "refused . . to emancipate the negroes, and a decree was made in the present case, that twelve months should be allowed to Johnson [his executor] to procure their emancipation. He applied to the Legislature, who . . passed an act authorizing any circuit court . . to receive . . the petition of emancipation, and to grant it or not, as they might deem proper. The circuit court . . [124] granted the petition . . and the negroes were carried by Johnson to . . Indiana, . . Johnson then sold the land,"

Held: I. "To provide for the subsistence of slaves now in being, who may hereafter become free,[2] is not against any law; . . [II.] [125] the objects of the testator's bounty were capable to take in reasonable time after his death, . . [III.] [126] The mind . . of the owner may be as well expressed by will, as by . . any other instrument;" [Haywood, J.]

Crabtree v. Cheatham, 2 Yerger 138, January 1826. "The wench was unsound when Crabtree sold her . . swelled with the dropsy, and . . could not recover."

[1] Act of 1799, ch. 28, sect. 2.
[2] Acts of 1777, ch. 6, and 1801, ch. 27.

Bob (a slave) v. State, 2 Yerger 173, August 1826. "May 1825, the defendant, (a negro slave, the property of . . Patton,) was apprehended on a warrant issued by . . a Justice of the Peace . . [174] The charge . . was that he had murdered Hannah Shaddon and her child . . The Sheriff was ordered to summon three Justices of the Peace, and a jury of [twelve] slave holders, to try the defendant . . The jury . . could not agree . . June . . a *nolle prosequi* was entered . . and the prisoner was discharged; another warrant was immediately issued . . and another court and jury were convened . . the jury found the prisoner guilty [1] . . On the next day the court again met and the four . . Justices pronounced the sentence of death . . and directed that the sheriff . . [175] should on the 11th July . . execute the sentence. . . the owner . . applied . . for writs of *certiorari* and *supersedeas*, . . refused . . On the 10th of July, . . one of the Judges of the Supreme Court . . ordered a *supersedeas* to the execution to be issued until the further order of the court. The execution . . was thereupon suspended until the cause could be heard in this court. . . [176] the court was clearly of opinion . . [the evidence] was not sufficient to convict the defendant."

Ordered [185] "that the circuit court grant the writ of *certiorari*; and . . the cause being brought before him, proceed to give such judgment . . as in his opinion ought to be done." See State *v.* Waterhouse, Mart. and Yerg. 278 (282-284).

Vaughan v. Phebe (a woman of colour), Mart. and Yerg. 5, January 1827. "Phebe sued Vaughan in the court below, in an action of trespass and false imprisonment; Vaughan pleaded that Phebe was a slave . . The cause was tried . . 1823" Pool deposed [6] "that he had been acquainted with Phebe for fifty years, and that she was always said to be of Indian extraction. . . also acquainted with her mother, called Beck, who was always called an Indian by descent: . . That Phebe had been deprived of her eye by a ringworm. That Beck, her mother, was sister to Tab, . . who had always claimed her freedom, and as he believed had got her freedom by due course of law. . . That he had often heard that Murene was the grandmother of Beck and Tab, and that she . . was remarkably old, and lived about with her children and grand children, and was always reputed an Indian, and was free. That Murene was a copper colour, and that Abner, the brother of Phebe, sued . . [7] Hardeway for his freedom, and was killed by said Hardeway; and that Phebe had often solicited him to undertake to procure her freedom, but from the long acquaintance he had with her master he would not do it." Martha Jones and Phebe Tucker deposed, "that they knew many years ago, a coloured woman named Phebe, in the possession of . . Hardeway . . That they had understood that Phebe was brought to Tennessee by . . Vaughan. That Tab had obtained her freedom by due course of law, and that they believed all Phebe's relations in those parts had also obtained their freedom upon the plea of their having descended from an Indian ancestor. They always understood that Molly Moore . .

[1] Catron, J.: [191] "I have never known any person convicted . . upon evidence so slight;"

had one of the family named Minor, and several others who had since all got their freedom, as will appear of record." [6] "the record of a verdict and judgment of the superior court of Prince George county (Virginia) in the suit of Tab *et al vs.* Littleburg Tucker [was read to the jury], which record established the fact, that Tab had . . recovered her freedom, on account of her descent from Indian ancestry." Verdict for the plaintiff.

Judgment thereon reversed and the cause remanded, with directions to reject the following words in Pool's deposition: [28] "that Abner . . sued . . Hardeway, and was killed by him;" and the following words in Martha Jones's deposition: "deponent believes all Phebe's relations in those parts have also obtained theirs . . Has also understood that . . Minor, and several others, have since got free," and similar words in Phebe Tucker's deposition. [27] "So far . . as the depositions have allusion to pedigree or common reputation as to freedom, we believe them to be competent evidence." [22] "Freedom in this country is not a mere name . . [23] and it makes itself manifest by many . . *public* acts. . . transfers its possessor, even if he be black, or mulatto, or copper-coloured, from the kitchen and the cotton-field, to the court-house, and the election ground . . in some states renders him a politician, . . takes him to the ballot box—and, above all, secures to him . . trial by jury. . . It is difficult to suppose a case, where common reputation would concede to a man the right to freedom, if his right were a groundless one." Crabb, J., delivered the unanimous opinion of the court.

Hawkins v. Jamison, Mart. and Yerg. 83, January 1827. "an action of trover . . brought by Jamison . . to recover the value of a female slave . . originally the property of Jamison, and . . sold . . January, 1822, at public sale by virtue of several executions, . . Hawkins became the purchaser . . having bid . . one hundred and two dollars, . . April following, Jamison . . informed him that he came to redeem his slave, and tendered . . the sum he (Hawkins) had paid . . with 10 per cent. interest thereon,[1] . . Hawkins refused . . unless . . he . . would also satisfy some other claims he had against him. . . [84] Jamison refused . . Hawkins then offered to keep the slave and allow Jamison 300 dollars for her, which . . was about her value. This Jamison also refused;"

Held: [88] "a court of equity is the only tribunal where justice can be done in such cases."

Crenshaw v. Anthony, Mart. and Yerg. 102, January 1827. [103] "1812, in . . Virginia, . . Crenshaw . . sold . . the slave Juno . . and some others, to . . Herring, possession of the slaves accompanied the sale, and remained with Herring for a few days—he then hired them to . . Crenshaw; and re-delivered them . . Sometime after . . Herring also purchased of Crenshaw, a certain tract . . but Crenshaw's wife refused to relinquish her right to dower . . and Herring . . agreed . . if she would release her right . . to convey to her son . . for her sole . .

[1] Act of 1820, ch. 11, sects. 2-5, repealed by act of 1825, ch. 43, sect. 1.

use . . Juno and her daughter Sally, . . July, 1813. . . [104] In 1814, . . Crenshaw and his wife removed . . to . . this state, and brought four negroes, the property of [Crenshaw] . . and also . . Juno and Sally."

Smith v. Bell, Mart. and Yerg. 302, July 1827. [303] "the sale of one of the negro women and her child;"

Kegler v. Miles, Mart. and Yerg. 426, January 1828.[1] "Miles, in 1815, . . was tending to insolvency . . he made a bill of sale of [a negro] to his daughter Nancy, then about 14 years old; no consideration was given, . . In 1816 or 1817, Nancy married . . Kegler, . . resided in Mississippi. Kegler, soon after the death of his wife [in 1822], returned to . . Tennessee, with the negro girl and his two children; he made a deed of gift of the girl to the children, . . [427] Soon after . . Kegler left Tennessee, leaving the negro girl and his children with . . Miles. In 1823, . . Miles . . sold her" Kegler's children brought suit.

Held: [429] "three years possession of the slave . . acquired without fraud or force, gave to David Kegler a legal title to her," [427] "It is contended, that the *remedy* of . . Miles was barred, but the *right* remained: . . if he got possession . . peaceably by *recaption*, the right and possession were again united, of which he . . could not be deprived . . [429] No authority[2] is found giving sanction to such an idea." [Catron, J.]

Scott v. Britton, 2 Yerger 215, January 1828. [217] "Rachel [about 30 years old] and her child [about five years old] were valued at 400 dollars [in 1814], Arch at 400 dollars, Ned [about three years old] 100 dollars, and Hayden [one year old] 75 dollars. . . [222] common field negroes, worth between 1,000 and 1,300 dollars."

Fields v. State, 1 Yerger 156, January 1829. "The plaintiff in error, was indicted . . for the murder of . . Peter, the property of . . Jefferies: . . The Jury found him not guilty of the murder . . but guilty of the manslaughter, . . moved for the plaintiff in error . . that no judgment should be rendered . . because . . manslaughter . . where the person slain was a slave does not in point of law exist; the court overruled the motion . . and passed sentence . . that he be burned in the brawn of the left hand, be imprisoned thirty days and pay the costs of the prosecution."

Judgment affirmed: [160] "the offence of manslaughter, when a negro or mulatto slave is the subject of it, . . exists by the common law: because it is the unlawful killing of a human being," [Whyte, J.]

Grainger v. State, 5 Yerger 459, March 1830. The deceased charged [460] "that he had held his negroes till the children of Grainger had whipped them. Grainger denied the charges,"

[1] "1825," in the margin, is evidently a misprint.

[2] Judge Haywood's declaration in Coleson *v.* Blanton, p. 486, *supra*, was an *obiter dictum*.

David v. Bridgman, 2 Yerger 557, July 1831. "Sampson David . . made his will in 1826, and shortly thereafter died. . . [563] He devised [his slaves] . . to his wife during life, if she should die before 1840; on her death, or in any event, on the first of January, 1840, he vested them in trustees in remainder, to be hired out until a sufficient sum was earned to transfer them to some colony or state where freedom was allowed . . and directed them to be emancipated." His widow died in 1827 and "the trustees . . took the slaves into their possession, and hired them out."

Held: "This disposition violated no law or policy of Tennessee,"

Andrews v. Hartsfield, 3 Yerger 39, March 1832. In 1814 her father "told her to take the girl to nurse her child; to take good care of her, and keep her until he called for her." "The slave remained in the possession of Mr. and Mrs. Walker . . until 1828, during which time she had two children. . . levied on, and were about to be sold to satisfy the debts of the husband."

Held: "By the act of 1801, ch. 25, sec. 2, the reservation of title by [the father] the complainant, as to the creditors of Walker, is . . void;"

Walker v. Wynne, 3 Yerger 62, March 1832. "In 1817, . . Walker . . loaned . . to his son . . the slave . . 1823, when in consequence of the creditors of [the son] . . intending to levy upon him, he run off, and was taken into possession" by the father.

Kearney v. Smith, 3 Yerger 127, March 1832. "brought from Virginia two negroes, . . which he sold"

Lawrence v. Bridleman, 3 Yerger 496, August 1832. "1825, mortgaged a negro man . . to secure the payment of $500,"

Overton v. Bigelow, 3 Yerger 513, August 1832. In 1826 [516] "one woman between 25 and 30 years old, and four children" were worth $1500.

Hadley v. Latimer, 3 Yerger 537, August 1832. Hadley, who died in 1830, [541] "was averse to slavery, . . had applied to the legislature and to the courts to have them freed, but his applications had been denied; and hence . . he employed respondent to convey them to a free state [Illinois], that they might be emancipated; and for this service gave him . . 243 acres. . . [542] some of the negroes had strong claims upon Hadley for their freedom, on the ground of merit;" See Blackmore *v.* Phill., p. 501, *infra.*

Black v. State, 3 Yerger 588, August 1832. "the plaintiffs, on the night of the 24th October, 1830, . . with clubs, knives, etc. did enter the dwelling house . . and did . . take . . one negro woman, . . of the value of $300. . . The defendants . . insisted on the right to show . . a title to the property, but the court refused"

Gwin v. Latimer, 4 Yerger 22, February 1833. Jim was sold in 1831 for $400.

State v. Shropshire, 4 Yerger 52, February 1833. In 1831 they [53] "were taken before a justice of the peace, upon a warrant charging

them with negro stealing; . . committed to the jail . . 1832, . . taken upon a *habeas corpus* before . . judge . . discharged,"

Loftin v. Espy, 4 Yerger 84, February 1833. Catron, C. J.: [92] "If the slaves of A. be levied upon for the debt of B. and A can show a clear right . . to the slaves, courts of Equity have jurisdiction to restrain the creditor and sheriff until the right be tried at law, or determined in equity, if the right be undoubted, in the mind of the court. . . it must often occur that the mother will be separated from the children, or the husband from the wife, if the sheriff be permitted to sell. Nothing can be much more abhorrent to these poor people, or to the feelings of every benevolent individual, than to see a large family of slaves sold at sheriff's sale; the infant children, father and mother, to different bidders."

Shenault v. Eaton, 4 Yerger 98, February 1833. In 1828 "two negro girls, . . Jemima, about fifteen . . [99] Lucy, about twelve . . [sold for] six hundred dollars: . . [101] that [the vendors] . . had owned the two girls for a short time only, having obtained them in exchange for others; . . [102] that . . Jemima was indisposed; that defendant [from North Carolina] . . represented that it was the effect of a cold; that Jemima was afflicted with a disease of the liver and womb, which produced her death in two or three months after the purchase; . . no proof which showed that the defendants . . knew . . whether she was diseased or not."

Sylvia and Phillis, by next friend, v. Covey, 4 Yerger 297, March 1833. "a bill filed by the plaintiffs, . . people of color, alleging they have instituted a suit for freedom, and that they are apprehensive that the defendant will convey them away and sell them; and they pray . . that they be taken out of his hands, etc. An attachment was awarded, by virtue of which the plaintiffs were taken out of the custody of the defendant. To this bill the defendant demurred . . sustained . . [The court] taxed . . the next friend with all the costs." Judgment reversed, [298] "and the cause remanded . . to be retained . . until the termination of the suit . . mentioned,"

Matilda v. Crenshaw, 4 Yerger 299, March 1833. "on the 15th June, 1825, . . she declared against the defendant for an assault and battery and false imprisonment, . . [300] verdict in [her] favor . . April, 1827, final judgment . . [Between those dates] the defendant continued to hold the plaintiff to labor as his slave, but permitted her . . to collect evidence, attend court, consult her lawyers, etc. . . her labor was of the annual value of $20, and that . . in prosecuting her . . suit . . [she] was necessarily compelled to expend about fifty dollars. . . that after she had recovered, she stated she was satisfied to live with defendant as she had done before."

Held: [304] "From the 15th of June, 1825 to the [ ] day of April, 1827, she is entitled to recover at the rate of $20 per annum. . . [305] The fifty dollars will be added to the wages;"

Morgan v. Elam, 4 Yerger 375, March 1833. Marriage contract, made in Virginia, in 1820, transferring about forty slaves to a trustee for the separate use of the wife.

Hardeson v. Hays, 4 Yerger 507, March 1833. "in 1826, . . when he removed [from North Carolina] to Tennessee he carried Rachel with him; . . sold her [about 1831 for] . . three hundred and thirty dollars"

Scruggs v. Brackin, 4 Yerger 528, March 1833. "action . . to recover the price paid for a negro, on a warranty that she was a slave for life. The breach . . assigned is, that she was at the time of the sale a free woman, and has since recovered her freedom. . . 'Know all men . . that I . . have . . sold and delivered . . Fanny, a slave for life, for the sum of three hundred and forty dollars, . . 1820.'"

Shute v. Wade, 5 Yerger 1, March 1833. The slaves were brought from South Carolina to Tennessee in 1804.

Wright v. State, 5 Yerger 154, March 1833. "during the night, . . [Boon] had stolen from his wagon, . . four hundred and fifty dollars. In the morning he had several of the neighbor's taken up, . . among them was Bob, the negro of Mrs. Wright, the mother of defendant. No discovery being made . . Mr. Boon requested those present . . to keep a look out . . upon these negroes, and to try and get the money . . Bob was seen to have money, and . . asked if he could get a fifty dollar note changed; his young master took him up and got from him one hundred and fifty dollars. In a few days, suspicion fell upon Wright from some information given by Bob, and two hundred and fifty dollars was found in his trunk"

Hogan v. Carland, 5 Yerger 283, December 1833. "they warranted Betsy to be about thirty-five years of age, . . Betsy was forty-five . . the defendants offered . . to prove that . . [the purchaser] knew the true age . . but had . . thirty-five inserted, in order to aid in selling her again."

Harrison v. Chilton, 5 Yerger 293, December 1833. "contract . . to pay four hundred dollars in cash notes, accounts, judgments and pork, for . . a negro girl."

M'Cutchen v. Marshall, 8 Peters 220, January 1834. Will of Patrick M'Cutchen, who died in 1812: [222] "It is my will and desire that my negro man slave named Jack, aged about twenty-four years; . . Ben, aged about nineteen years; . . Rose, aged about twenty-six years, together with what children she may hereafter have, if any, before the death of my wife Hannah; also . . Eliza, aged about eleven years; . . Cynthia, aged about seven years; . . Thomas, aged about four years; . . Harriet, aged about two years; . . Maria, aged about two months; the four last mentioned slaves being the children of the above mentioned Rose, shall all and each, at the time of the death of my beloved wife Hannah, to whom they are given during her natural life, . . be liberated from slavery, and for ever and entirely set free: provided, those who are not

now of age or shall not have arrived at the age of twenty-one years at the happening of the death of my beloved wife Hannah, shall be subject to the following disposition, viz. Eliza shall be at the control and under the direction of my brother Samuel M'Cutchen until her arrival at the age of twenty-one years, and then be set free; Cynthia, Ben, Thomas, Harriet and Maria, shall be at the control and under the direction of James Marshall, my wife's brother, until they shall each, respectively, arrive at the age of twenty-one years; at which time, or times, they are to be each, respectively, liberated, and for ever set free."

Held: [240] "the decision in the case of Hope *v.* Executor of Beattie,[1] must be considered as settling the construction of the act of 1801,[2] and authorising the executor to petition the court for the manumission of the slaves, and justifying the proceedings of the court thereupon. This construction of the act of 1801, puts at rest the claims of the appellants to all the slaves, except the children of the females, which were born after the death of the testator, and before the death of his widow, to whom all his slaves were bequeathed, during her natural life. And this class includes the children of Eliza and Cynthia only." They must [241] "be considered slaves:" "the course of decisions in . . Tennessee, and some other states where slavery is tolerated,[3] go very strongly, if not conclusively, to establish the principle, that females thus situated, are considered slaves. That it is only a conditional manumission, and that, until the contingency happens, upon which the freedom is to take effect, they remain, to all intents and purposes, absolute slaves. And we do not mean to disturb that principle." [Thompson, J.]

Lyon v. Vick, 6 Yerger 42, March 1834. [43] "the balance of the negroes bequeathed to him . . were sold . . and the proceeds applied to the payment of testator's debts;"

King v. Cohorn, 6 Yerger 75, March 1834. [76] "The defendant was an artful . . man, . . The complainant was a negro woman, ignorant, old, addicted to drunkenness, then in bad health, and necessarily imbecile, and possessing no other property than the lot in question [worth about four hundred dollars]. The contract was made in secret. . . [77] Her husband was a slave belonging to the defendant, and worth about the same sum. Several of her neighbors had heard her say that she wanted to sell her lot for Edmund her husband. . . he was then sick at her house. Even the son-in-law of defendant says he heard her offer the lot to defendant for Edmund. But . . we find this old destitute negro woman giving . . her home . . for a heavy wagon and less than half a team of inferior horses. . . [78] a most gross fraud. . . contract . set aside," [Green, J.]

University v. Cambreling, 6 Yerger 79, March 1834. "Col. Patton, a Colonel in the North Carolina line during the revolutionary war . . caused to enlist as a musician [drummer], in the service of the United

[1] Hope *v.* Johnson, p. 491, *supra.*
[2] Tenn. act of 1801, ch. 27, sect. 1.
[3] Maria *v.* Surbaugh, vol. I. of this series, p. 138.

States, his negro slave . . Frederick, who served during the war . . and was thus entitled to a one thousand acre warrant . . 1821, a warrant . . issued to the University of North Carolina, for the services of said slave, reciting that he died without heirs," [85] " It is contended, that the act of 1782, ch. 3, sec. 6, never could have intended to provide a permanent reward in land, a home and fireside for a slave . . who, from his political and moral condition, it was impossible to reward."

Held: " This argument . . is addressed to us in vain. The board of commissioners of North Carolina has . . [86] adjudged that negro Frederick . . was entitled to one thousand acres of land. . . conclusive. . . What is earned by the slave belongs to the master, . . North Carolina held as trustee for Col. Patton," [Catron, C. J.]

Hickman v. Quinn, 6 Yerger 96, March 1834. Catron, C. J.: [103] " She felt as every woman does and should feel, that to take away the negroes her father had given her, was taking away from her part of her family, and a cruel necessity. . . [104] Most of the negroes were young and an expense to the purchasers of the life estate."

Fisher's Negroes v. Dabbs, 6 Yerger 119, March 1834. Will of Peter Fisher, 1827: [120] " I give my negroes . . their freedom, and a right to live on my . . land fifteen years; also . . one year's support; . . a sufficient quantity of horses, cows, hogs and farming utensils for them to make a support, to be divided by men appointed by court. If any of my negroes withdraw from the land, he has no right any further to do any thing with the land, but his share falls to the rest," Dabbs, administrator with the will annexed, " though urged by the negroes . . to file a petition in the county court . . [121] for the purpose of procuring their emancipation, refused . . unwilling to sign the bonds required by law. In 1829, an act was passed . . 'if the executor . . refused . . it shall be lawful for such . . slaves to file a bill in equity by their next friend;' . . After the passage of the act of 1829, the bill of Levy, Handy and others, by their next friend, . . was filed: . . [122] in 1831, the legislature passed . . an act[1] to explain . . an act passed . . 1829, ch. 29, . . 'That the . . act [of 1829], shall . . [not] extend to any case [of emancipation by will probated] . . before the passage of the [act of 1829] . . but . . it shall be the duty of the Chancellor . . to have the same stricken from the docket;' . . [123] This the Chancellor, Reese, refused to do . . The causes were afterwards tried by Chancellor Cook, who refused to emancipate any of the slaves, except one. The bill was therefore dismissed as to the residue, . . appeal "

Held: I. [131] " we give the assent of the State to the emancipation of these slaves, in accordance to Peter Fisher's will, upon the condition . . that they be transported to the coast of Africa." [126] " The idea that a will . . or deed of manumission, is void in this State, is ill founded. . . but it is an imperfect right, until the State . . assents . . It is adopting into the body politic a new member; a vastly important measure . . especially in ours . . where the free negro's vote . . is of as high value

[1] Ch. 101. Car. and Nich. 278.

as that of any man. . . most objectionable population." Review of the emancipation acts of 1777, ch. 6; 1801, ch. 27; 1829, ch. 29; 1831, ch. 52. [129] "We think it is clearly inconsistent with the policy of the State . . to give the assent of the government to the manumission . . upon any terms short of their immediate removal . . beyond the limits of the United States . . [130] additional reasons. The act of 1833, ch. 64, to aid the colonization society, . . [It] has formed a colony of free blacks at Liberia, . . The people residing there . . are enjoying a life of comfort and of equality, which it is impossible in this country to enjoy, . . [131] here . . the negro . . freed . . is a reproach and a by-word with the slave himself, who taunts his fellow slave by telling him 'he is as worthless as a free negro.' . . Generally, and almost universally, society suffers, and the negro suffers by manumission. . . [II.] [132] The act of 1831, ch. 101 . . [is] unconstitutional" [Catron, C. J.]

Harris v. Clarissa, 6 Yerger 227, March 1834. Will of Thomas Bond of Maryland, 1800: [238] "he liberated [1] several of his slaves, . . other . . bequests . . at the expiration of . . five years . . Bishop to be a free man. . . Jim, aged fourteen years, to serve . . until he is twenty five . . and then . . to be a free man. . . Frederick, aged twelve years, to serve . . until twenty five . . and then . . to be a free man. . . Abelard, aged one year, to serve . . until he is twenty five . . and then to be a free man. . . that . . Dinah, shall have her freedom at my death; . . Suck . . three years after my death; . . Rachel . . five years after . . Betty . . four years after . . that . . [239] all the young negroes . . shall have their freedom . . at the age of twenty five. . . Clarissa, at the . . testator's death, was about ten . . Before Clarissa was twenty five, she had . . Hannah, Delia and Edward; after that age she had Edy and Martha."

Held: [245] "When the title of Harris [a distributee] ceased, his title, by our law, to the three children ceased . . when Clarissa was twenty-five. The executors have no title over, nor has any one." [Catron, C. J.]

Jordan v. Trice, 6 Yerger 479, May 1834. A negro woman, aged thirty-five, and her child were sold for $650.

Wilson v. Bryan, 6 Yerger 485, May 1834. In 1831 "'all the hands in Denmark [district?], and within three miles of the road,' were designated to work under him"

Douglass v. State, 6 Yerger 525, May 1834. [529] "Douglass, with two constables, with several others, in a threatening manner, took from the smoke house of Kincaid some of his negroes, claiming the right to do so by virtue of executions against Kincaid's son-in-law."

Reeves v. Dougherty, 7 Yerger 222, August 1834. [228] "hire of seven negro men from the 1st of March, 1816, to the 1st of March, 1819, at one hundred dollars per year [each] . . [229] three women for the same time, sixty dollars each [per year], . . two girls . . at twelve dol-

[1] Act of Maryland of 1796, ch. 67, sect. 13.

lars each [per year], . . George, a boy, [at ten dollars a year] . . credited with the following negroes: Dilce, . . $800; Jim, . . 700; Charlotte, . . 300; Joice, . . 300; Juda, a boy, . . 350; Bob, a boy, . . 200; George, a boy, . . 150"

Napier v. Person, 7 Yerger 300, March 1835. "when the contract of hiring was made [for the year 1831], it was agreed that there should be a deduction for the time the slaves might lose by sickness, and by running away; and that for the time so lost there should have been a deduction of fifty-two dollars and seventy-five cents;"

Wright v. Weatherly, 7 Yerger 367, March 1835. "Andrew, . . the property of Wright, and Jerry . . the property of Weatherly, quarrelled; . . Andrew stabbed Jerry . . and Jerry shortly afterwards died." Weatherly "recovered a judgment against Wright of five hundred and fifty dollars."

Judgment reversed: [380] "some remedy . . is loudly called for, . . to protect the people from injuries which this unfortunate, degraded and vicious class . . may inflict. The court, however, cannot afford such remedy." [Green, J.]

Blackmore v. Negro Phill, 7 Yerger 452, March 1835. Action for trespass and false imprisonment. [453] "Joshua Hadley,[1] whose slave he was, by . . a bill of sale [in 1828], transferred all his right . . to the plaintiff to . . Latimore, who . . conveyed the plaintiff to . . Illinois, and . . 1829, . . by his deed of manumission, . . [in Equality] in the county of Gallatin, . . before the proper tribunal . . freed the said plaintiff" Latimore stated, [455] "that he removed the plaintiff, with the other negroes . . and remained with them some three or four days . . That . . the . . negroes . . were taken . . to Illinois with a view of their becoming citizens of said State, and remaining there; but that after the execution of the deed of manumission, they expressed some anxiety to return to Tennessee and wait upon their old master, Capt. Hadley; and having asked . . the clerk of the court, whether they could return without endangering their liberty, and he having informed them that they were free and could go where they pleased, they returned . . and remained there until the death of Joshua Hadley; when the whole of them . . were taken into possession by defendants . . Joshua Hadley, after the return . . hired Stephen, and having fallen out with him, then hired . . Phill. . . [456] The jury found a verdict for the plaintiff [defendant in error]"

Judgment thereon, affirmed: it [465] "was well left to the jury . . that if the intention was bona fide to free the slaves, . . [466] once free in Illinois, the return to Tennessee does not replace them in the condition of slaves. . . If it be true as contended, that the original design was to evade the laws of Tennessee, and that the return of the plaintiff . . is inconsistent with our policy, still that will not place them in the condition of slaves. . . If this State designed to make such acts . . nullities, then express enactments should be shown." [Peck, J.]

[1] See Hadley *v.* Latimer, p. 495, *supra*.

Battle v. Bering, 7 Yerger 529, March 1835. "1831 . . purchased . . a blacksmith, for . . twelve hundred dollars,"

Loving v. Hunter, 8 Yerger 4, March 1835. Will of Norvell of Virginia, 1809: [5] "that the land be sold . . and the money . . laid out in young negroes," One of the slaves was brought to Tennessee by the daughter of the testator.

State v. Smith, 8 Yerger 150, May 1835. "Smith was indicted for forging the following . . 'N. Carolina. The bearer, Martin Rivers, was raised by William E. Williams, . . This is to certify, that Martin Rivers was free-born, and bound to me until he was twenty-one years of age; his time was out in 1819, and has conducted himself honestly and soberly, . . and is a well meaning man. . . May, 1825. William E. Williams.' . . [151] The indictment alleged, that the paper was . . delivered to a . . slave, named Charles, the property of . . Caruthers, as a certificate of freedom, . . convicted"

Judgment arrested: [152] "As a falsehood, the paper is of a most dangerous character; . . As a legal instrument it is nugatory on its face, . . the defendant . . is clearly not subject to the penalties of felony," [Catron, C. J.]

Miller v. Denman, 8 Yerger 233, July 1835. Action brought by Denman against Miller "for enticing out of the possession . . [234] of the plaintiff [defendant in error], a slave, . . Harriet, . . the daughter of . . Rose, . . claimed as a slave by Denman who resides in Georgia. About two years before . . Harriet made her appearance . . in this State, passing by the name of Irene Sanders, and assuming to be free, and as she was white, no one suspected that she was a slave, or that she had any negro blood. . . was residing with the defendant, when the plaintiff . . claimed her . . The girl admitted she was a slave, . . and they set out for Georgia. Some of the neighbors of defendant . . wanted to know if there was no way of making the plaintiff prove . . He suggested . . they had better let the matter rest. Afterwards at their request he drew up a blank process, and gave it to them, and they arrested the plaintiff, and brought him and the girl before two justices, who discharged the girl, and committed the plaintiff to prison. . . the defendant was asked, what was to be done with the girl? . . he replied, he supposed she might go where she pleased, . . she left . . in company with a young man . . Evidence was introduced by the defendant, proving that Rose . . was reputed to have been free; that she came from Pennsylvania, and had been improperly reduced to bondage. . . admissions of Denman, that Rose was free; and also, that he said it was supposed she was free-born. The court charged . . [235] that Mr. Miller . . could not avail himself of such evidence"

Judgment for the plaintiff, Denman, reversed and the case remanded: [235] "it was competent for the defendant to prove that she was of fair complexion, straight hair, and that she was the daughter of a woman . . [236] reputed to be free. This principle is distinctly asserted by this court, in . . Vaughan *vs.* Phebe.[1] . . Although that case

[1] P. 492, *supra.*

extends the right to introduce hearsay evidence to the utmost limit, and further than other courts of high authority have gone; yet . . we will not now disturb it." [Green, J.]

Marshall v. Penington, 8 Yerger 424, August 1835. [425] "that Penington had the negro in possession under a hiring . . and that she left his possession at the solicitation of the defendant [Marshall, who claimed her as administrator.]" He [429] "carried her on his horse to his own house, and there concealed and kept her," [1]

Held: he "clearly incurred the penalty." [2] The doctrine of the right of recaption is [431] "now exploded" in this state. Overrules Gordon *v.* Farquhar, p. 490, *supra.*

Wharton v. Thompson, 9 Yerger 45, March 1836. "On or before the 1st of January, 1835, we . . promise to pay . . fifty dollars, for the hire of Daniel, until the 25th of December, 1834, and to furnish . . three suits of clothes, one pair of shoes, blanket and hat; . . 1st Jan. 1834." Defendants "offered to prove, that said note was executed . . about the 25th of December, 1833, . . that said negro had been wounded [[46] 'from a wad shot against him'] previous to its execution, of which wound he died . . 9th of January, 1834, and that plaintiffs and defendants were ignorant of the injury . . evidence . . rejected" Affirmed.

Shaw v. Smith, 9 Yerger 97, March 1836. A negro woman and two children were sold by the sheriff for $521. "The negroes immediately descended from the block, where they had stood with the sheriff, who said . . 'Here, Shaw, are your negroes, take them.'" [101] "purchasers at these sales . . purchase upon speculation, and often obtain property at one-half or one-third its value; scarcely ever is a fair price obtained." [Green, J.]

Hickman v. Cantrell, 9 Yerger 172, March 1836. A boy fourteen or fifteen years old was sold for $450 in 1826.

Graham v. Swearingin, 9 Yerger 276, April 1836. "On the 17th day of December next, we . . promise to pay . . one hundred and ten dollars . . hire of . . Jeff, for twelve months from this date [November 17, 1831], and to deliver . . in Memphis, said negro at the end of the term," Jeff was "to be employed in the work . . of a servant and common laborer, . . that his necessary and comfortable clothing, medical attendance and provisions were furnished by defendants, that said negro was of unruly disposition, and that said defendants attempting moderately to chastise . . he forcibly broke from them and absconded . . and that the defendants used all possible means . . by instant pursuit and by advertisements of reward . . and were unable . . to apprehend said negro." Held: it is not a covenant to insure the return of the negro.

[1] [427] "when Penington found out where she was concealed, he made up a company, broke down Marshall's door, and re-took her by force. . . indicted for the trespass." [432] "when they attempted to defend themselves . . because they had the right of re-caption as true owners . . their defence, was rejected."

[2] Act of 1799, ch. 28, sect. 2.

McCullough v. Moore, 9 Yerger 305, June 1836. [306] "1830, a court of pleas and quarter sessions . . was begun . . present . . [nineteen] magistrates . . On . . the transcript of that day's proceedings, is set forth the petition of Daniel Slavins, praying the emancipation of the plaintiff below [Fanny Moore], and various other slaves, . . certificate . . 'the court unanimously agree to grant the prayer . . on the petitioners entering into bond . . ten thousand dollars.' . . 'ordered by the court that said slaves . . be emancipated . . and thereupon . . Slavins . . entered into bond,' . . As the statute requires that a majority or nine of the acting justices should be present, and two-thirds of those present should concur in the act of emancipation, the entry . . not incorporating a statement . . so many . . present, we have, it is argued, no record evidence of the presence of nine, and the concurrence of six . . Their number fluctuates during each hour."

Held: I. [307] "those who allege the presence of a smaller number . . must show affirmatively by the record that such was the fact. . . [II.] [308] If . . the entry omit to show . . the proper number . . present to protect the interests of the public," the emancipation appears not to be voidable by the master.

Dunnaway v. State, 9 Yerger 350, December 1836. "The plaintiff in error was indicted for keeping 'a disorderly common tipling house.' The jury found a special verdict 'that the defendant on one occasion kept a house in which there was a collection of twenty or thirty negroes more than belonged to the place . . who got drunk, danced and disturbed the neighborhood with noise and uproar' . . judgment against him on the verdict." Reversed.

Turner v. Armstrong, 9 Yerger 412, December 1836. "a negro girl . . was sold at constables sale to pay his debts;"

Jenkins v. Picket, 9 Yerger 480, December 1836. [486] "the driver of the wagon was a young negro who had never been allowed to make contracts for hauling, who had never before been trusted with a wagon and team alone, . . sent to Nashville with a load of cotton . . to bring home salt,"

Henderson v. Vaulx, 10 Yerger 30, December 1836. [36] "Defendants [owners of the life estate] insist, that they have a right to remove the negroes and themselves to . . Mississippi, where slave labor is more profitable, . . making said slaves more beneficial to them, in the culture of cotton;"

Held: they may not take them from Tennessee: [37] "It is but recently, in this state at least, that the peculiar nature and character of slave property, and of the relation between master and slave, have been regarded in our courts in the spirit of a rational and humane philosophy. . . But recently . . it has been determined that a court of chancery will protect the possession . . [38] of this peculiar property, a property in intellectual and moral and social qualities, in skill, in fidelity and in gratitude, as well as in their capacity for labor; . . The remainder man is . . entitled to be secured in the specific slaves . . [39] We have a mild penal

code as regards slaves, . . We have a much greater portion of free than of slave population; and the slave, without severity, is kept in a safe subordination; . . Here there is . . protective public sentiment to the slave—there [in another state] it might be otherwise. Here the annual profit of the slave's labor bears no very large proportion to his value, and . . interest is on the side of humanity, and he may not be over worked—there the annual profit may be one third of his entire value, and the temptation would be to overwork him. Here the moderate annual profit . . makes an increase of the stock an object, and mothers and children are tenderly treated . . Here we have a . . healthful climate" [Reese, Ch.]

Overton v. Bigelow, 10 Yerger 48, December 1836. Held: [54] "mortgagee of a negro is subject to the same responsibilities . . that exist in the case of a hirer. . . essential [doctrine] to secure the slave in needful food and raiment . . and to prevent cruelties, which may force him to absent himself, so that he may be lost to the general owner;" [Reese, J.]

Galt v. Dibrell, 10 Yerger 146, December 1836. In 1821 Ross moved from Virginia to Tennessee with nine negroes.

Jones v. Ward, 10 Yerger 160, December 1836. [169] "$60 should . . be allowed . . for his expenses in keeping Sylvia and her children, during . . 1825, 6, and 7,"

Cocke v. Trotter, 10 Yerger 213, December 1836. [215] "1816, . . purchased a negro woman . . [for] $300,"

Walker v. McConnico, 10 Yerger 228, December 1836. "1832, . . executed . . a deed of trust . . five negroes, . . for . . paying his debts,"

Richmond v. Richmond, 10 Yerger 343, December 1837. Petition for a divorce. [344] "adultery . . with the negro Polly, . . [349] took . . Polly, . . to keep house for him. . . in the habit of sitting by the fire with Polly after the laborers in the shop had gone to bed." Evidence of his relations with her. [344] "tried by a jury, and the issue found against the defendant." Decree affirmed.

Copeland v. Bennet, 10 Yerger 355, December 1837. In 1828 Park "removed [from South Carolina] to . . Tennessee, bringing with him the girl . . 1833, he executed . . a bill of sale . . for the negro . . [for] $358 50,"

Pearce v. Gleaves, 10 Yerger 359, December 1837. Will: [361] "after the death of my wife, I wish my negroes to be sold," except four.

Yarbrough v. Newell, 10 Yerger 376, December 1837. "owning a negro girl, . . that he knew would be the first [property] seized upon and sold by the officers to satisfy the claims"

Thomas v. Scruggs, 10 Yerger 400, December 1837. "the executors [about 1805] sold . . the negroes . . to pay the debts . . when there was sufficient money to pay the debts;"

Dowell v. Bailey, 10 Yerger 489, December 1837. "In 1824, . . Harris requested Dowell to send him the negro for a week to pick out cotton." In 1826 he was sold for $900.

Mahala v. State, 10 Yerger 532, December 1837. Indictment of a slave for the murder of Nancy Newton. [533] "The jury still not agreeing . . the court had them confined . . and next morning, . . the jury again . . told the court it was impossible for them ever to agree, . . the court . . discharged them. . . the counsel for the prisoner [did not consent] . . moved the court to . . discharge the prisoner upon the ground . . that it operated as an acquittal. . . refused . . At a subsequent term . . convicted . . and judgment of death pronounced." Judgment reversed and the prisoner discharged.

Lavina v. Duffield's Executors, Meigs 117n., March 1838. Will of John Duffield, dated 1807: "All to . . be at my . . wife, Elizabeth Duffield's disposal . . during her life time; and at her death, all the negroes . . to be emancipated . . male negro slaves . . at 22 years of age, and the females at 19" He died in 1812, and his wife in 1832.

Held: "the intention of the testator was only to give a life estate to his widow; . . the complainants are entitled to their freedom; . . upon their giving bond . . to indemnify the county"

Potter v. Coward, Meigs 22, April 1838. "1838, . . Lewis [healthy negro], was struck off at . . $680. . . [He was not delivered to the defendant] [23] "nor did he pay any of the purchase money on that day. . . During the night Lewis died suddenly, . . defendant . . refused to pay" Held: the sale was complete; the loss is the loss of the vendee.

Dodge v. Brittain, Meigs 84, June 1838. "The testimony . . tended to prove that the plaintiff had received the lost goods from one of the defendant's slaves, by means of whom the defendant had attempted to entrap the plaintiff,"

Jacob v. Sharp, Meigs 114, June 1838. Will of Abraham Vernon, 1825: "my negroes, Jacob and Jinne, and her two children, Jack and Malinda, . . at my wife's death, I wish them to be set free: and if they should be disobedient to my wife, she may dispose of them as she pleases." His widow married Sharp in 1826, and died in May 1834, "without making any disposition of the slaves. After her death, Sharp took Jinne and Jack, Malinda having . . died, to Mississippi, where he sold them as slaves. Threatening to do the same with Jacob, he took refuge in the house of . . McKinney, Esq. to whose protection his mistress, a few hours before her death, had commended him, and by his next friend . . a brother of the testator, . . November, 1834, filed this bill, . . [115] praying for an injunction to prohibit Sharp . . till application could be made to a court of law to emancipate complainant . . granted. . . 1835, Sharp filed his answer, . . testimony . . that, in the testator's life time, Jacob had been obedient and dutiful; that afterwards, he had fallen into habits of intemperate drinking, and at such times, had been insolent and disobedient to his mistress, and had . . even threatened her life; . . had been taken before magistrates on an accusation of stealing, been pro-

nounced guilty and punished; that he had not been obedient to appellant after his intermarriage . . 1837, . . his Honor declared the complainant to be entitled . . to all the rights . . of a free man, on his giving bond and security to leave the State, within . . six months, . . and he perpetuated the injunction."

Decree affirmed: [118] "The testator did not contemplate that the slightest disobedience should constitute the right of disposition, . . proof of Jacob's disobedience could have no effect on conferring . . an absolute title to him, unless she had acted upon it . . by actually disposing of him." [Green, J.]

Jones v. State, Meigs 120, June 1838. "1836, . . the grand jury indicted the plaintiff in error, a free man of color, of petit larceny. . . a meal bag . . he said it had been given to him by Peter, a free man of color, . . proved by . . Brown that he had . . dealt in meal; that Peter . . traded in meal, beer, cakes, etc. . . He did not offer to introduce Peter as a witness; . . his counsel requested his Honor to charge [the jury] . . that Peter was not . . a competent witness; . . His Honor . . instructed them, that Peter . . was a competent witness . . for the defendant, and that he should . . have produced him, . . verdict of guilty, . . and judgment pronounced,"

Judgment reversed and new trial granted; a man of color cannot [121] "be a witness *for* the defendant and against the state." [1]

Jordan v. Black, Meigs 142, June 1838. See Underwood's case, p. 511, *infra.*

Gambling v. Read, Meigs 281, December 1838. "1837, Gambling sold Read, Hannah, a female slave for $1200, . . Hannah had a young child, [a boy, three months old,] and her distress at the separation from it induced Read to propose to purchase it; . . agreed that he should have it for 150 dollars,"

Weedon v. Wallace, Meigs 286, January 1839. John "took the negroes allotted to him and his idiot brother, and the idiot to Kentucky, . . [289] complainant had repeatedly directed Shackleford . . to sell them in Kentucky and never bring them home, because the idiot would make more fuss about them than they were worth. . . directed Shackleford to say, in the presence of the idiot, that they were *hired*, not sold."

Underwood v. Dismukes, Meigs 299, January 1839. [301] "Two negroes had, . . 1811, . . been loaned to Rutherford, who took them [from Kentucky?] to North Carolina, where they were sold for his debts."

State v. Claiborne, Meigs 331, January 1839. [338] "The defendant was indicted [in 1838] . . under the act of 1831, ch. 102, as a free man of color, emancipated in Kentucky, for removing into this State and residing here, more than twenty days. . . he demurred . . sustained"

Judgment reversed, and cause remanded: I. the act does not violate the constitution of the United States. [339] "Free negroes have always been a degraded race in the United States . . with whom public opinion

[1] Act of 1794, ch. 1, sect. 32.

has never permitted the white population to associate on terms of equality, and in relation to whom, the laws have never allowed . . the immunities of the free white citizen. . . The citizens . . spoken of [in the U. S. Constitution, article IV., section 2], are those . . entitled to '*all* the privileges . . of citizens.' But free negroes were never in any of the States, entitled to *all* . . and consequently were not intended to be included, . . [II.] [341] the word 'Freeman' as used in the bill of rights [of Tennessee], is of equally extensive signification with the word citizen as used in the Constitution of the U. States; . . although the defendant by his emancipation . . obtained a qualified freedom, he did not become a 'freeman' in the sense of *Magna Charta,* or of our Constitution." [Green, J.]

McKisick v. McKisick, Meigs 427, January 1839. [428] "In 1815 or 1816, Mrs. McKisick had a daughter . . to whom her grandfather . . immediately . . gave Sam, a slave, . . On [McKisick's] . . removal to Tennessee [from North Carolina, about 1833], he brought the slaves with him,"

Angus v. Dickerson, Meigs 459, January 1839. In 1835 "Dickerson hired the negro to . . Angus to drive his wagon and team, for nine months; . . The negro, . . desiring to live with Lane [his former master], put himself into his possession . . while on his way, to Angus. . . Lane told [Angus] . . that, as Angus was responsible . . for the hire, he, Lane, would secure the payment of it in one month, and in the mean time, would keep the negro, paying hire for that time, and surrender the negro to Angus . . [460] if he failed to give the security. . . failed . . but kept him . . 1836, the negro . . died." Held: Angus is responsible to Dickerson for the loss.

Stewart (*a man of color*) *v. Miller,* Meigs 574, February 1839. "action of trespass . . the plaintiff offered in evidence the following record of the county court . . '1837. Petition to emancipate Stewart. . . The [ten] justices . . upon the petition of . . executor of Mary McElhatton . . it appearing . . that said Mary . . declared by her will, . . proven . . [575] 1830, her negro man Stewart to be free, on his paying one hundred and fifty dollars,—and that said . . dollars have been paid . . by . . Stewart, who, being . . inspected by the court, is more particularly described . . And the [executor] . . having given bond and security, as required by the act [1] . . the Court . . do . . adjudge that . . Stewart, be . . deemed a free man.' . . this record was excluded . . verdict for the defendants."

Judgment thereon reversed, and the cause remanded: [577] "the record . . ought to have been read as evidence. . . every thing was done which the law requires, except the making and filing the report of the chairman. But . . there is a substantial compliance . . if the court . . pronounce judgment that the applicant 'shall be . . deemed free,' it is sufficient to entitle him to his freedom, although there may not be the most exact regularity in the proceeding." [Green, J.]

[1] Act of 1801, ch. 27.

Kneeland v. Ensley, Meigs 620, February 1839. [621] "Thompson, after the marriage [in 1811, in Louisiana] . . sold her slave Will for 900 dollars, and Thomas for 250 dollars." He returned to Tennessee in 1812, bringing the rest of the slaves.

Banks v. Wilks, 1 Humphreys 279, April 1839. In 1830 a negro man was sold for $700.

Hays and Wife v. Hays, 1 Humphreys 402, July 1839. "an action for words spoken . . of the plaintiff, Rebecca. . . 'You . . have killed one negro and nearly killed another.' Upon demurrer, the circuit judge [held] . . the words were not actionable, and gave judgment for the defendant,"

Reversed and the cause remanded: [403] "if the jury find them to have been used in their worst sense, the court will consider them as having been so used."

Smith v. Story, 1 Humphreys 420, July 1839. [423] "a tract of two thousand acres . . upon which he had eight negroes,"

Murphey v. Goin, 1 Humphreys 440, July 1839. Action of covenant. [442] "Goin doth hire [in 1834] a negro boy, . . about eight years old, for twelve months; and . . Murphey is to give . . fifteen dollars for said hire, and to find the . . boy in clothes, and to deliver . . boy to . . Goin at the end of the twelve months." At the end of that time "Murphey pointed to the negro . . and said to Goin, 'there is your slave, go and take him.' . . Goin took him by the arm. . . sheriff . . having . . an execution against . . Murphey, took the negro by the other arm; a scuffle ensued and [the sheriff] . . succeeded . . advertised him for sale, . . Goin forbid the sale, . . The sheriff, however, being indemnified, sold the boy for . . three hundred and forty-five dollars." Held: the delivery was a valid delivery.

Deer v. Devlin, 1 Humphreys 66, December 1839. [67] "that she . . claims to be the exclusive owner of . . Hannah and her [fourteen] children . . that she had sold one of the children . . [69] for . . three hundred and fifty dollars, . . appropriated . . to the payment of the debts"

Elijah (a slave) v. State, 1 Humphreys 102, December 1839. "the grand jury . . April, 1839, returned a true bill against Elijah . . for an assault and battery with an intent to commit murder in the first degree, by killing . . Puryer. . . the defendant pleaded not guilty, with the concurrence of his master, who defended the prosecution, . . the jury not being able to agree, . . a mis-trial entered. . . September term, 1839, . . [103] tried . . 'the owner . . was rejected by the court as an incompetent witness;'" "defendant convicted . . sentenced to be hanged"

Verdict [105] "set aside, and the judgment reversed, and the prisoner remanded to be tried again,"[1] [104] "in a case like this the law, upon high grounds of public policy, . . takes the slave out of the hands of

[1] Same *v.* same, p. 513, *infra*.

his master, . . treats the slave as a rational and intelligent human being, . . and gives him the benefit of all the forms of trial which jealousy of power and love of liberty have induced the freeman to throw around himself for his own protection. . . [105] the objection must be held to extend to the credit not to the competency of the master." [Reese, J.]

Richardson v. Thompson, 1 Humphreys 151, December 1839. "Samuel Richardson . . filed this bill . . 1837, against . . Thompson, the administrator of . . Hopkins, . . praying that certain [twenty-two] slaves . . be decreed to be delivered up to him . . to be emancipated. . . [152] alleges . . that . . he being opposed to slavery and averse to holding them, yet being unable to surrender all his means of worldly support, he received [in 1814] from Hopkins [his brother-in-law, 'a man of known humanity,'] . . sixteen hundred dollars for . . [eight] slaves, and executed to him . . [an absolute] bill of sale . . upon the express condition and trust that . . Hopkins should keep them together, not sell them, and provide at or before the death of . . Hopkins, that said slaves should be emancipated or re-conveyed to him" [151] "Hopkins sold one of the slaves . . [152] had promised him to re-purchase the slave sold, but had died [in 1836] without so doing or making provision . . for the emancipation of the others . . and that the administrator had refused to emancipate them." Bill dismissed: [153] "the trust alleged . . could not be . . sustained by parol proof,"

Horsely v. Branch, 1 Humphreys 199, December 1839. [202] "action to recover the value of a negro man, slave, . . Branch hired . . Isaac, to Horsely for . . twelve months [for one hundred and twenty dollars], and that the defendant [Horsely] . . agreed that said negro slave should 'not . . be employed in or about the water, so as to endanger his health and life: . . [203] but that defendant agreed to employ him in cutting and hauling saw-logs and on his farm,' . . that the plaintiff stated to the defendant . . that he was subject to the rheumatism, and could not swim. . . The defendant lived on one side of the river and the mills were on the other. . . They were in the habit of crossing the river above the dam in a canoe. . . [204] When they discovered the boat would go over, witness told the negroes to jump out. . . Isaac . . was drowned. . . [205] The jury found a verdict for the plaintiff . . and assessed his damages to one thousand dollars,"

Judgment thereon reversed and the cause remanded: [206] "As, by the special contract . . Isaac . . must be much about the mills and on the other side of the river opposite the house . . A fair construction . . did not forbid his crossing the river . . so as to accomplish that object." [Green, J.]

Lawrence v. State, 1 Humphreys 228, December 1839. John Lawrence, a free man of color, was indicted "for stealing bank notes of the value of four hundred and eighty dollars, . . the prosecutor . . left . . his pocket-book lying on the table [in Lawrence's barber shop]. . . the jury found Lawrence guilty of grand larceny, and fixed his term of imprison-

ment in the jail and penitentiary house of the State at eight years, and also returned a verdict against him for . . four hundred and eighty-four dollars," Judgment thereon, affirmed.

Hunt v. Watkins, 1 Humphreys 498, April 1840. [499] "The property [in 1834] . . consisted of . . about five hundred acres, thirty-nine slaves,"

Underwood's Case, 2 Humphreys 46, July 1840. "Elizabeth Morgan, being about to marry Hambright Black, executed [on the wedding day] a deed of trust . . whereby she conveyed to . . Jordan certain slaves for the purpose of having them emancipated . . and sent to Liberia at the death of said Elizabeth, she reserving to herself a life estate therein.[1] . . Threats were made by Black, that he would sell the slaves, and thereupon Jordan filed his bill . . praying an injunction, . . granted and . . 1838 . . a decree was entered up [by the Supreme Court] [2] by which it was ordered that . . 'H. Black should be perpetually enjoined from selling . . or from taking . . said slaves beyond the limits of this State.' . . Shortly after . . the slaves were clandestinely removed to . . Mississippi. Jordan, . . 1839, . . made an affidavit stating that, H. Black, W. Black and Thomas J. Underwood, had removed the slaves . . to . . Mississippi, with full notice of said decree, . . the [supreme] court . . 'directed, that an attachment issue to the Sheriff . . commanding him to have the bodies of the defendants before the court, to answer a charge of contempt in this court,' . . [47] served on Underwood. . . filed his answer, denying his knowledge of the decree"

Held: [50] "Such affidavits as may be offered to contradict the answer . . will . . be received as evidence."

Goodman v. Floyd, 2 Humphreys 59, December 1840. "The plaintiffs [in 1831] fix the value of . . Tony, . . at $500, and Priscella at $300,"

Woodfolk v. Sweeper, 2 Humphreys 88, December 1840. [89] "Peter Sweeper was black, . . born of a free black woman, in . . Maryland, . . and convicted, . . 1826, in the said State . . of persuading and conveying slaves out of . . Maryland into . . Pennsylvania, and sentenced . . to be 'banished by sale and transportation for . . seven years;' . . sold by the Sheriff . . purchased by Joseph Woodfolk, . . conveyed to . . Tennessee, and deposited with the defendant [William Woodfolk] in 1827; . . Woodfolk held him as a slave till . . 1835, and it does not appear that he had any knowledge of the plaintiff's being a freeman further than . . the occasional assertion of such claim by the plaintiff. . . 1835, Sweeper instituted an action of trespass, *vi et armis*, . . against W. Woodfolk for the recovery of his freedom; . . employed attornies, . . that the suit was laborious and expensive; that the depositions were procured at much . . cost from . . Maryland; that a witness was brought from said State . . [90] eight hundred miles, to testify . . in

[1] Also "the right to emancipate any, or all of them . . at any time during her life." Jordan *v.* Black, Meigs 142.

[2] *Ibid.*

regard to identity . . that he recovered a judgment for his freedom . . that there was an appeal . . to the supreme court . . reversed and remanded . . that the plaintiff again recovered a judgment, . . defendant again appealed to the supreme court, . . December, 1838, finally affirmed. . . the services of the attornies were estimated at $150 for the suit at law, and $25 for the suit in chancery." In January 1839 Sweeper instituted the present [88] "action of trespass, *vi et armis*, against William Woodfolk. . . averred that the defendant . . December, 1832, . . reduced him to the condition of a slave and compelled him to labor . . [89] until . . February, 1835; that . . defendant, appropriated the entire proceeds . . and that such services were reasonably worth . . seven hundred dollars. The plaintiff further averred, that . . he was compelled to expend large sums in prosecuting suits for . . his freedom, . . [90] The presiding Judge . . charged the jury that the plaintiff was *entitled* to recover as damages; 1, the value of his services . . 2, the expenses he necessarily incurred . . attornies fees; . . verdict for the plaintiff, for $743 30, in damages."

Judgment thereon reversed and the cases remanded: I. [95] "that profits for the time a free man of color has been wrongfully held in slavery, is not the subject matter of account; . . [II.] that merely nominal damages are recovered [in a suit for freedom], and that a second suit must be brought to recover the actual damages, . . [III.] the court erred . . [96] in the use of the word '*entitled*,' . . leaves the jury no discretion as to the amount of damages, but really makes it a matter of account," [Turley, J.]

Wilkins v. Gilmore, 2 Humphreys 140, December 1840. "that . . Wilkins had become dissatisfied with his tenant; that . . 1839, a slave, or a white man blacked so as to resemble a slave . . threw off the roof. . . The judge charged . . that if the slave of Wilkins threw off the roof . . by the command . . of Wilkins, Wilkins was liable . . verdict in favor of the plaintiff" [Gilmore.]

Held: [141] "the evidence . . [142] well warranted the verdict"

Coleman v. Pinkard, 2 Humphreys 185, December 1840. [186] "In 1835, Pinkard sold Hasen for . . $850, subsequently assigning as a reason . . that the slave was a bad fellow"

Guthrie v. Owen, 2 Humphreys 202, December 1840. Owen's will, 1838: [204] "My desire is, that Tom should select himself a home, and be sold privately for a moderate price."

Keaton v. Campbell, 2 Humphreys 224, December 1840. [225] "1825, went to Missouri, . . taking . . about 20 negroes,"

Long v. Hicks, 2 Humphreys 305, April 1841. "Received of Long and Byrne their note at nine months, for $825 . . for negro Hannah, aged 18 years, and her child Wesley, aged 15 months, . . sound and well, . . 1837." There was testimony "that . . Wesley was affected from his birth with a disease of the spine, . . [306] that the diseased condition . . was apparent to casual observation; that Byrne was told that the

child was unsound and that he said the woman was worth the money. . . that if Wesley had been sound, he would have brought two hundred and fifty dollars."

Held: [308] "A written warranty does not extend to defects which are visible, or of which the vendee is informed at the time of the sale."

Fowler v. Norman, 2 Humphreys 384, April 1841. "A negro man, a [runaway] slave, was committed to the custody of . . Fowler, sheriff and jailor of Shelby county, . . October, 1837, and remained . . one hundred and ninety days. A negro woman [runaway slave] was also committed to his custody . . April, 1838, and remained . . thirty days. They made their escape, and on the 18th of May, 1838, they were . . committed to the custody of the sheriff and jailor of Carroll county, as runaways. After . . three months, Fowler . . demanded the slaves of the jailor of Carroll . . [who] received his fees, ninety-nine dollars, . . however, subsequently refused the surrender of the slaves . . and offered to return the money . . declined"

Held: the sheriff of Shelby county can have no interest in their possession, as they did not remain in his jail twelve months.[1]

Grandison (a slave) v. State, 2 Humphreys 451, December 1841. "The defendant was convicted . . of an assault and battery, with intent to ravish Mary Douglass, and was sentenced to suffer death." [2]

[452] "Let the judgment be reversed and arrested, and let the prisoner be remanded to the jail" [452] "Such an act committed on a *black woman*, would not be punished with death. . . *this fact* [that the person assaulted was a white woman], which gives to the offence its enormity, . . must be charged in the indictment, and proved on the trial." [Green, J.]

Dougherty v. Curle, 2 Humphreys 453, December 1841. "Mrs. Ewing sold . . a [male] slave for $1000, in . . 1838."

Elijah (a slave) v. State, 2 Humphreys 455, December 1841. See same *v.* same, p. 509, *supra*. Elijah "was convicted . . for an assault and battery 'upon David C. Puryear, being a free white person,' with intent to commit murder in the first degree.[3] . . [465] it has been suggested, that the exhibition of Puryear, as a witness, was sufficient evidence that he was white and free,"

Judgment reversed, and a new trial awarded: "fact . . essential . . must . . be proved. . . The *name* . . imports nothing, for negroes have such names. Nor does his office as foreman in a mechanic's shop, nor the fact that he was a witness . . Many negroes are conductors of mechanic shops, and several negro slaves were witnesses in this cause." [Green, J.]

Baldwin v. Baldwin, 2 Humphreys 473, December 1841. In 1830 [476] "a *feme sole*, . . owner of . . thirty or forty negro slaves, contemplating a marriage . . executed a deed . . reserved to herself

[1] Act of 1825, ch. 77, sect. 1.
[2] Act of 1833, ch. 75, sect. 1; act of 1835, ch. 19, sect. 10. Car. and Nich. 683.
[3] Act of 1835, ch. 19, sect. 10. *Ibid.* 683.

the power to direct in what manner the slaves should be employed; . . and by her directions in writing, . . in the presence of one or more witnesses, to alienate . . also to . . bequeath . . the same"

Martin v. Fancher, 2 Humphreys 510, December 1841. A negro man was sold for $900, and a negro woman for about $600.

Harwell v. Worsham, 2 Humphreys 524, December 1841. In 1840 a negro boy was sold for $700.

Johnson v. Perry, 2 Humphreys 569, December 1841. "action of trespass, *vi et armis*, . . 1839. . . that some verbal altercation took place between the slave [of Perry] and one of the defendants, and that thereupon the defendants . . were attempting to tie him for the purpose of inflicting chastisement . . the slave made his escape, and in his flight leaped down a precipice about four feet high and fell. . . the bones of the knee were broken, . . a permanent injury, impairing much the value of the slave." "a physician of not much skill was immediately called in," A second physician, called in after the suit was brought, "stated that Perry had paid him . . fifty dollars; that the slave, previous to the injury, was worth from eight hundred to a thousand dollars; . . [570] would hire at $150 per annum, and that his boarding and clothing were worth about $50 per annum. . . The defendants introduced proof . . That the attack on the slave was produced by his insolence and intoxication, . . That Perry's management of this slave was such as to impress on him an inclination to be insolent and calculated to bring him in collision with white men. . . rejected. . . that the injury had been increased by drunkenness, exposure and unskilful treatment." Verdict for $800.

Judgment thereon reversed and the cause remanded: damages must not include medical bills contracted after the commencement of the suit.

Dillard v. Dillard, 3 Humphreys 41, April 1842. In 1827 [45] "Chany and her two children (of which Caroline is one) were set up in a lot and sold together [for $360]. . . [46] Merritt Dillard agreed with William J. Dillard, the bidder, to pay $100 of his bid and take . . Caroline [four years old] for his daughter," about five years old. He [41] "removed to . . Mississippi, carrying his daughter and the slave with him,"

Greenlow v. Rawlings, 3 Humphreys 90, April 1842. "1837, Isaac Rawlings applied to the county court by petition to emancipate William Isaac Rawlings, a mulatto boy, the son of a slave of . . Isaac, whom he had always recognized as his son," [92] "brought up in his family as a free boy—and so regarded by . . Isaac, who never intended he should be a slave. . . The chairman . . endorsed . . that in his opinion it would be consistent with the interest of the state,[1] that it be granted;" [91] "A bond was given . . to keep the . . slave from becoming chargeable upon the county." [93] "the court proceeded to adjudge that . . William Isaac Rawlings be free. . . It is not shown by the said judgment, that . . Isaac Rawlings entered into bond, conditioned that . . William should leave the State, as the act of 1831, ch. 102, sec. 2,[2] re-

[1] Act of 1801, ch. 27. Car. and Nich. 277.
[2] *Ibid.* 279.

quires; nor is it stated in the *judgment* that William I. Rawlings had contracted for his freedom previously to the passages of the act of 1831, . . whereby to exempt him from its provisions, under the act of 1833, ch. 81." [1] [91] "Isaac Rawlings died, . . [by] will . . he gave all his estate . . to his 'natural son' . . and made him executor thereof." As executor, William I. Rawlings endorsed to Greenlow a note executed by Thomas J. Rawlings to Isaac Rawlings. "Greenlow instituted an action . . against the maker and endorser. The maker pleaded that the endorser . . [92] was a slave, and the endorsement void."

Held: [94] "the act of 1833 does *not* require, that proof of the contract, the existence of which dispenses with the provisions of the act of 1831, shall be placed upon the record as part of the judgment. . . we are to presume that the proof required . . was made; [2] . . The evidence . . is ample to show, that Isaac Rawlings, long before . . 1831, had . . treated William I. Rawlings as free, . . It is unnecessary to decide whether this conduct . . amount to a *contract*, within the meaning of the act of 1833; because we hold that the legislature conferred by that act, on the county court the right to judge of the existence of such contract, and therefore give the assent of the state, . . its judgment is final" [Green, J.]

Britain v. State, 3 Humphreys 203, July 1842. "indictment charged that . . 1840, . . 'Britain . . did . . commit . . notorious lewdness by . . causing and permitting his . . slaves to go about . . so naked and destitute of clothing, that their organs of generation and other parts . . which should have been clothed and concealed, were publicly exposed' . Proof . . that the slave was seen on various occasions . . almost entirely destitute of clothing, with some tattered rags hanging upon her, and her body exposed indecently . . verdict of guilty. . . [204] judgment . . against the defendant, that he pay a fine of $25 and cost," Affirmed.

Hartsell v. George, 3 Humphreys 255, July 1842. Action of trespass *vi et armis* brought by "George, a free boy of color, under twenty-one . . by his next friend . . 1836, . . [256] The plaintiff introduced a document as evidence . . 'at a court of pleas and quarter sessions, . . 1821, . . [fourteen] justices being present, . . a majority of the justices of the county, the following record was made, . . "The petition of John Bayless, Sen., . . that your petitioner is now the owner . . of . . Jenny, about . . 25, which slave, I, being fully impressed with the great impropriety of slavery, and believing liberty to be the unalienable right of all human beings, desire to manumit at the time hereinafter mentioned, for the following reasons: 1st. That by the time hereinafter mentioned, she will by her industry have compensated your petitioner for the money expended in the purchase of her. 2d. That by reason of her good qualities, she would be a fit subject for civil society, and will support herself. . . your petitioner prays that an order be made, liberating

[1] *Ibid.*

[2] "all presumptions in favor of personal liberty and freedom ought to be made." Oatfield *v.* Waring, 14 John. N. Y. 188 (193).

said slave at . . the death of petitioner or wife, or the survivor" . . granted' [signed by ten of the fourteen justices present] . . [257] Bayless gave bond in the penalty of $600 . . 'to be void on condition that Jenny . . this day emancipated at the death of . . Bayless and wife, shall not become chargeable to . . county.' . . During the time she was held by the widow (still living), she bore . . George. George was . . sold [by a son of the deceased] . . to Hartsell, . . as a slave for life. . . Testimony was offered on the part of Hartsell, for the purpose of showing that Bayless was insane at the time of the record"

Held: I. the omission of any of the justices to sign in the character of chairman does not invalidate the act of emancipation; II. [259] "it was an act of emancipation *in presenti* . . to be enjoyed . . on the part of the slave in future. . . The act was consummate; . . the character of slave ceased. . . [III.] the defendant in error was born free." IV. The jury [257] "had no right to enquire into the sanity . . of the deceased at the time the order of liberation was made."

Gass v. Gass, 3 Humphreys 278, July 1842. "John Gass, at an advanced age, and infirm health, made his last will . . 1837. . . [279] an eccentric man, having peculiar opinions . . that the state of pre-eminence he would acquire in his future existence depended in some measure upon the amount of estate he should acquire, and the charitable purpose to which he should contribute it. . . The will . . directed, that at the death or marriage of his wife, his slaves should be set free, and . . $100 given to each family, to enable such family to remove to a non-slaveholding State." Held: such opinions constitute no evidence of insanity.

Field v. Arrowsmith, 3 Humphreys 442, December 1842. About 1841 a negro man was sold for $650 cash.

Loyd v. Currin, 3 Humphreys 462, December 1842. About 1829 a [463] "negro boy, then six or seven years old . . had been pledged . . for the security of a small sum of money;"

Sydney (*a slave*) *v. State*, 3 Humphreys 478, December 1842. "the third count charges, 'that Sydney, a negro boy slave, . . 1841, . . upon . . a free white woman of the age of six years, . . did . . make an assault, with the intent . . to ravish' . . defendant demurred . . sustained"

Affirmed: [480] "the Legislature did not mean, by the word woman, in the act [of] 1835 [ch. 19, sect. 10], . . a child under the age of ten years."

Jacob (*a slave*) *v. State*, 3 Humphreys 493, December 1842. "indicted for the murder of his master, R. Bradford. . . [494] 1840, the slaves of Bradford . . were engaged in pulling fodder, . . Jacob with another boy had been at play . . That Bradford had . . reproached Jacob . . and threatened to whip and sell him. Jacob then told his master that he was as tired of him (Bradford) as he (Bradford) was of him. Bradford . . attempted to whip Jacob. Jacob snatched the whip . . broke it up and ran off. In a day or so Jacob came home. Bradford ordered Jacob to get a rope,

informing him that he must be tied and whipt. . . Jacob refused . . Bradford then ordered him to go off until he was willing to be tied and whipped. On Sunday [a few days later] . . Jacob came home. Bradford asked . . if he was willing to be tied and whipt. . . not. He (Bradford) then told him to go to the smoke-house and take out as much provision as would do him until he was willing . . and clear out, he did not wish him to be pillaging his neighbors. Jacob then left the plantation . . Bradford went to the house of his brother Frederick . . and requested him to come over in the morning and help him to tie and whip Jacob. Jacob was not in the habit of carrying deadly weapons of any description, but had prepared a large butcher-knife, and ground it and concealed it under his clothes. On Monday morning Jacob passed by . . on his way home. F. Bradford started on after him in a short time. . . borrowed a stick of one of his negroes . . [495] called Jacob [at the barn] . . Robert said 'I am going to whip him,' . . seized him. Jacob attempted to . . escape. Frederick . . seized Jacob by the collar of his coat; . . said, 'you must not fool with me or I'll strike you.' Jacob then replied, 'beat me then, and kill me if you please.' Frederick . . struck him two blows on the head with the stick . . The two Bradford's threw Jacob, and Jacob turning his face down rose with them on his back. . . [did so] again . . Jacob . . drew the knife from his bosom, . . struck Robert . . exclaiming, 'damn it, clear the way.' Robert . . died in about five minutes. Jacob made his escape and was arrested in an adjoining State some months afterwards. The character of the deceased, as proved by his neighbors and by his slaves, was that of an indulgent and kind master. . . [499] verdict of guilty. . . sentenced to be hanged."

Judgment affirmed: [521] "the right to obedience . . in all lawful things . . is perfect in the master; and the power to inflict any punishment, not affecting life or limb, . . for the purpose of . . enforcing such obedience . . is secured to him by law, and if in the exercise of it, with or without cause, the slave resist and slay him, it is murder . . because the law cannot recognize the violence of the master as a legitimate cause of provocation." [Turley, J.]

Wade v. Green, 3 Humphreys 547, December 1842. [549] "Hannah . . with three others were previous to 1822, placed in the possession of . . Hill, who resided in . . Tennessee, by his father-in-law . . of Virginia,"

Hinklin v. Hamilton, 3 Humphreys 569, December 1842. "1821, Hugh Hinklin executed his . . will, . . devised to . . Will and . . Suky, his wife, their freedom at his death, and bequeathed them the use of a part of the land on which he resided, during their lives. . . No steps were taken by the executors . . to procure an order of emancipation from the county court. . . [570] The negroes were regarded and treated by every body as free, from the date of the probate . . They continued to live upon the land . . till . . May, 1840, when Suky having become nearly blind . . came to the residence of . . Hamilton . . where she remained till . . October, 1840, when she died. . . At the April term, 1840, . . Suky, and her two children [born after the death

of the testator], . . by their next friend, . . Hamilton, filed their petition in the county court . . asking to be emancipated . . which was ordered, upon the bond of . . Nevins and . . Mayfield . . The children . . are in the possession of . . Hamilton, they having been bound as apprentices to him. . . September, 1840, . . Avery M. Hinklin [the surviving executor, who [569] 'left the State shortly after the death of testator, and was absent for many years'], filed his bill . . asking that said negroes be delivered up to him as slaves,"

Held: [573] "the county court . . has given the assent of the State, . . [575] [the executor's] assent is not necessary to their freedom, . . the right of freedom, given to the . . children . . is complete and [we] enjoin . . Hinklin . . from . . molesting them" [Turley, J.]

Porter v. Porter, 3 Humphreys 586, December 1842. "about 1825, . . the boy having contracted bad habits and become refractory, [the complainant] . . was unable to govern him. . . 1829, . . [the son of the complainant] sold Henry without complainant's consent, and he was taken to Louisiana."

Thompson v. McKisick, 3 Humphreys 631, December 1842. Peters' will: [632] "It is my will . . that . . [my daughter] have the benefit of said [seven] negroes, either by keeping them . . or selling them and having the proceeds . . But I . . direct that they be sold in the neighborhood . . as I do not wish them to be carried to a distance, if she should choose to sell them."

Bowman v. Tucker, 3 Humphreys 648, December 1842. Will: "I bequeath to daughter . . wife of . . Tucker, one negro woman, Eliza, who is to be under my daughter's control entirely, until . . Tucker may furnish her another, that my daughter . . may accept in place of Eliza. I further give . . three children of Eliza's, . . And in case . . Tucker . . refuses to take the . . negroes on the above conditions, my executors . . shall . . sell them together to the highest bidder . . the proceeds . . for the benefit of my daughter; . . in case my daughter . . should die without issue, . . all the property . . to be given to the Lord's treasury, to wit, to religious societies, such as the Presbyterian church may direct."

Hinton v. Cole, 3 Humphreys 656, December 1842. "the testator [in 1823] devised his negroes to his wife, and created a charge upon his real estate for the payment of his debts."

Timmons v. Garrison, 4 Humphreys 148, July 1843. "The attachment . . was levied in . . Tennessee, upon a negro man . . decoyed out of . . Georgia . . for the purpose of giving the courts of Tennessee jurisdiction" Held: [149] "No court . . would entertain jurisdiction of a case based upon such illegal . . conduct."

Pettitt v. Pettitt, 4 Humphreys 191, July 1843. "he had been . . living in retirement, . . with no family about him but his slaves."

Henry v. Hogan, 4 Humphreys 208, July 1843. Will of William Conway, 1838: "In accordance with my constant desire for the last twenty years, I will that at my death all the negroes then belonging to my estate

shall be liberated; . . [209] I wish my executors to present my request . . to the legislature, that that . . body may allow my slaves to remain in the State. If, however, . . not . . it is my will that my executors should take such steps as may be . . necessary to secure . . their freedom in any one of the United States . . As . . some delay will take place before it can be ascertained whether . . allowed to remain . . I desire that the proceeds of my lands should be appropriated . . to their . . benefit, until their liberty is fully . . secured . . If my slaves have to be removed . . out of the State, or even . . transferred to Liberia, the expenses are to be paid out of my personal estate . . and I desire that . . a sum shall be appropriated . . to provide for the wants and support of my negroes until they can by their labor provide for themselves." "insuperable difficulties arose to the emancipation . . in the United States, . . necessary . . to procure an order [in 1841] from the county court . . [210] for their emancipation upon the condition of their removal to Liberia:"

Held: "that the devise of the land in fee to others was with this charge upon it and that they take it *cum onere* . . [211] till the emancipation . . in 1842."

Hunter v. Foster, 4 Humphreys 211, July 1843. A family, with a negro girl, removed from Virginia to Tennessee.

State v. Love, 4 Humphreys 255, December 1843. "a presentment . . 1842, . . for permitting his slave . . to retail . . spirituous liquors"

State v. Watkins, 4 Humphreys 256, December 1843. "indictment . . for forcibly taking . . out of the field . . of . . Loon, a negro slave, . . property of . . Loon." Quashed.

Yerger v. Rains, 4 Humphreys 259, December 1843. Action of trover to recover the value of two slaves. Before Yerger's removal from Tennessee to Mississippi, in 1838, he sold two slaves. The contract was rescinded, and [260] "the slaves having been placed in jail for safe keeping, Yerger wrote to his agent . . to send them to him at Vicksburg, . . thought they would bring a better price at that place, . . sent . . 1839, sold them to . . Lane for twelve hundred dollars, on twelve months credit, . . Lane brought them to Tennessee . . levied on . . at the sale by the defendant as sheriff, Yerger, by his agent, forbid the sale . . [261] the Mississippi constitution [of 1832] . . declares, 'that the introduction of slaves into that State as merchandise, or for sale, shall be prohibited . . after the first day of May, 1833.' . . The High Court of Errors and Appeals of . . Mississippi . . had determined[1] that the clause . . [262] is an inhibition *per se*, . . The Supreme Court of the United States . . hold[2] the clause to be mandatory to the legislature to prohibit . . Since . . that opinion, . . the Court of Errors and Appeals of Mississippi[3] . . unanimously declare their adherence to their first conclusions." Verdict for the defendant.

[1] Green *v.* Robertson, 5 How. Miss. 80 (December 1840); Glidewell *v.* Hite, *ibid.* 110 (December 1840); Cowen *v.* Boyce, *ibid.* 769 (January 1841).
[2] Groves *v.* Slaughter, 15 Peters 449 (January 1841).
[3] Brian *v.* Williamson, 7 How. Miss. 14 (January 1843).

Judgment thereon, affirmed: the contract of sale, being void by the law of Mississippi, is void in Tennessee also.

Henry (a slave) v. State, 4 Humphreys 270, December 1843. "The plaintiff was indicted . . for an assault upon . . a white woman, with intent to commit a rape. . . [271] The girl . . states, that the prisoner met her at the spring, . . and after asking her some questions upon indifferent subjects she became alarmed and started towards the house, . . he caught her by the back of the neck and choked her down several times; that she cried out, and he left her." Verdict of guilty.

Judgment thereon, reversed: [272] "the jury were, perhaps, warranted in arriving at the conclusion, that the assault was commenced with an intention to ravish, . . we would feel scarcely authorized to give a new trial upon this evidence. . . But in this record, there is no entry showing that the grand jury returned . . 'a true bill.' . . It is no where shown, in this bill of exceptions, that [the person attacked] . . is a white woman." [Green, J.]

Jim (a slave) v. State, 4 Humphreys 289, December 1843. See same *v.* same, p. 522, *infra*.

Foster v. Hall, 4 Humphreys 346, December 1843. [348] "Eaton, . . 1840, gave direction for the transfer, from Nashville to Washington, of . . a female slave to serve him as a cook;"

Herring v. Pollard, 4 Humphreys 362, December 1843. [363] "delivered him a negro woman and child, at the price of $800."

Gilliam v. Bransford, 4 Humphreys 398, December 1843. "bill to enjoin the collection of a judgment . . for the hire of a negro man, . . that the negro was addicted to stealing, which information was not communicated at the time of the hiring: that . . he stole . . more than . . his hire; . . [399] had been hired to Yeatman and Co. previously, and had stolen from them."

Bill dismissed: "we cannot see upon what ground a moral defect should be disclosed in the hire or sale of a slave, more than a vicious habit in a horse, . . unless the contract be made especially with a view to such quality." [Turley, J.]

Cunningham v. Wood, 4 Humphreys 417, December 1843. [418] "that her father . . devised to her a negro man, . . that she sold [him] . . for twelve hundred dollars, and that with four hundred dollars of that sum," Malinda was purchased.

Macon v. State, 4 Humphreys 421, April 1844. "Macon was the owner of . . Jack, and permitted Jack to go about the country practicing medicine, . . He was indicted[1] . . proof, that the defendant [Jack] was an obedient, exemplary slave, and a most successful practitioner of medicine; that he had performed many cures of a most extraordinary character, and that his character was so well established for skill in . . healing the sick, that all his time was occupied in attending the calls of

[1] Act of 1831, ch. 103, sect. 3.

. . [422] diseased persons, . . The court . . charged the jury, that a slave had no right to practice medicine under any circumstance. . . verdict of guilty. . . the defendant having been fined one dollar, appealed."

Judgment affirmed: [423] "the legislature was guarding against . . insurrectionary movements on the part of the slaves. . . A slave under pretence of practicing medicine, might convey intelligence from one plantation to another, of a contemplated insurrectionary movement; and thus enable the slaves to act in concert to a considerable extent, and perpetrate the most shocking masacres [*sic*]. . . it was thought most safe to prohibit slaves from practicing medicine altogether." [Green, J.]

McAlister v. Marberry, 4 Humphreys 426, April 1844. Covenant to pay debts amounting to $500 11 "for two negro boys, . . [to be] delivered . . January, 1843."

Halloway v. Lacy, 4 Humphreys 468, April 1844. "agrees . . to pay . . two hundred and twenty-five dollars for his services as overseer . . to commence overseeing on the 1st January, 1842."

Cain v. Kelly, 4 Humphreys 472, April 1844. "Henry . . eloped from . . his owner [Kelly], . . and gave himself up to a Justice of the Peace . . [473] committed to jail as a runaway slave. . . While in Cain's custody [several months], the negro was . . employed in his service, ploughing his ground, chopping his wood and conveying water, . . made his escape . . a general verdict for the plaintiff [Kelly] for $400," Judgment thereon, affirmed.

Payne v. Payne, 4 Humphreys 500, April 1844. [501] "he was in the habit of using such language to her [his wife], as is not usual to be addressed to slaves."

Belew v. Clark, 4 Humphreys 506, April 1844. "February, 1839, Hurt sold . . negro girl . . to Clark. The bill of sale [for $250] represented her to be about six years of age, and warranted her to be sound. . . Hurt said that she had an obstinate, mulish, sullen temper, . . he had owned her about four years; that at times her actions indicated an absence of intellect, and that at others she seemed to have as much as usual with those who had no better tutoring [[509] 'She had been brought up . . altogether with negroes, having had little or no communication whatever with white persons'']; one of her legs had been broken, and her toes were frostbitten. . . [507] April, 1839, Clark sold her to Belew . . [for] three hundred dollars, and warranted her 'to be sound.' . . The bill charges, that she was absolutely an idiot, and of no value; . . known to the defendant . . The answer admits that he represented her to possess a sound mind, but that he stated that she was not sprightly . . and that her dullness and refusal to talk . . resulted from her having been badly treated, and from want of tutoring, . . Two physicians . . made a partial examination from two to four hours, and stated . . that she was . . stupid, to an extent bordering on idiocy, . . [508] appeared, that the complainant kept the slave for nearly a year; . . and had authorized

her to be sold at auction as sound in body and mind." Bill dismissed. Decree affirmed [510] "without prejudice to the complainant's right to sue at law,"

Morgan v. McGhee, 5 Humphreys 13, September 1844. "that Margaret Morgan . . was a half-blood Cherokee, . . that the slaves . . were delivered to [her] . . in 1828 by her mother,"

Lamden v. State, 5 Humphreys 83, September 1844. [86] "In . . 1839, Butcher, who was a 'steam doctor,' . . did render, to the plaintiff in error himself, and a servant of his, medical services in that line. . . judgment . . for . . one hundred dollars. . . void; . . no jurisdiction,"

Sword v. State, 5 Humphreys 102, September 1844. "Sword was indicted, under the act of 1842, ch. 141, and convicted . . for selling a quart of whiskey to a slave without permission from the master. . . fined fifty dollars" Affirmed, and [103] "we . . direct that, in addition . . the defendant be imprisoned one week."

Pulse v. State, 5 Humphreys 108, September 1844. "Pulse had sold a barrel of whiskey to the slave without the consent of his master, and had employed an agent to deliver it . . intercepted . . The jury found the defendant guilty, . . sentenced to be imprisoned one week, and fined five dollars."

Judgment reversed, and the case remanded: [109] "the evil intended to be suppressed by the statute,[1] was the consumption of spirits by slaves, to the detriment of their moral character, and the danger of the peace of the community. A contract of sale without a delivery could by no possibility be attended with any such evils," [Turley, J.]

Crippen v. Bearden, 5 Humphreys 129, September 1844. In 1836 a negro girl and her child were sold for $660.

Thompson v. State, 5 Humphreys 138, December 1844. "Thompson . . was convicted . . upon the testimony of one witness, . . that he saw the defendant sell a quart of whiskey to a slave . . [for] twelve and one half cents . . [139] defendant admits that he expected the State's witness to prove that his negro slave, attending to his liquor booth for him, sold the whiskey; and yet he was not prepared to prove that it had been done . . against his positive orders." Judgment affirmed.

Jim (a slave) v. State, 5 Humphreys 145, December 1844. "Isaac, a slave, . . of . . Avant, was murdered [in 1843] in the kitchen of . . Williams, . . [147] where his negroes sleep," "sleeping on the floor with his feet towards the fire;" [145] "George, against whose owner executions were in the hands of the sheriff, and . . Jim, against whose owner an attachment had issued, were both . . [146] concealing themselves in the woods, . . near . . The persons having the executions against George, had employed Isaac to catch George, . . they both made frequent threats that they would take his life. Both were armed: . .

[1] Act of 1842, ch. 141.

were connected, George's wife being Jim's cousin; . . Cindy [George's wife] says, . . [147] the prisoner . . told her that he had shot the damned rascal, through a crack . . Williams and . . Avant found tracks . . [148] deficiency in the sole of the shoe that made it: on examining the prisoner's shoes, a [corresponding] piece was wanting . . Boyd arrested the prisoner . . in a cave about half a mile from . . Williams's house. . . said he had sold his pistol to . . Creps two or three weeks before for a dollar and a half, and had paid Cellar's Mary fifty cents for washing, and Hart's Daphney thirty-seven and a half cents for a shirt pattern, and still had a 'bit.' . . Creps denies . . Williams's Nancy" and her mother, Becky, gave testimony conflicting with Cindy's. Cindy told Mary [149] "she did not want to destroy Jim for such a fellow as Isaac was. The State proved by . . [three] sons of Williams, . . the owner of Cindy, Nancy and Becky, that Cindy is a woman of truth, . . but that Nancy and Becky are in the habit of telling stories," Jim [145] "was tried . . 1843, and convicted. He appealed, and the judgment was reversed [because of the misconduct of the jury].[1] . . He was again tried, . . 1844, . . and condemned to be executed."

Judgment affirmed: [151] "Isaac . . seems to have lost *caste* . . He had combined with the white folks to betray George . . no slight offence in their eyes: that one of their own color, subject to a like servitude, should abandon the interests of his *caste*, and, for hire, betray black folks to the white people, rendered him an object of general aversion. . . hence it was, that Cindy did not wish to destroy Jim for such a fellow." [Green, J.]

Bill (a slave) v. State, 5 Humphreys 155, December 1844. "Bill . . was indicted . . for an assault with intent to commit a rape on . . a free white woman." [157] "Mrs. Smith . . was badly mounted and encumbered with a child and luggage, and travelled slowly." [155] "she met . . about half a mile from the town, a negro, whom she at first supposed to be one of her mother's; she asked him who he was, to which he replied, *one*, . . parted . . After proceeding one mile and a half further . . she found a negro standing in the corner of the fence; a negro boy . . travelling with her, spoke to him, and he answered as if he was alarmed, or had been running; she passed on, and he pursued, . . after . . [156] insolent language pulled her from her horse and threw her upon the ground, informing her what his designs were. The negro boy beat off the assailant, upon which she fled . . an apron for a small boy, nurse, was dropped, . . Watson proves . . that he saw her pass, and a short time afterwards a negro man rode up and enquired of him, who those were . . observed, that he thought it was Mrs. Husbands and Zack; and said he wanted to see Zack, and immediately turned in pursuit in a gallop or trot. . . thought the negro was either Bill . . or his brother . . Tom, a slave, . . heard the screams . . Bill came to the fence . . [157] holding his horse; he enquired . . if his brother . . had been there . . he [Tom] then enquired of the prisoner if he had heard the hollowing, to which he answered no. Witness then observed,

[1] Same *v.* same, 4 Humphreys 289.

that it might have been heard to town. Prisoner then observed, that he believed he did hear a little . . [159] the cloth[e]s of the nurse of Mrs. Smith . . were afterwards found in the possession of the prisoner," [155] "He was tried . . February term, 1844, and convicted and sentenced to be executed."

Judgment affirmed: [160] "the more easily to overtake her, . . he dismounted from his horse, and by taking the hypotenuse of the angle . . he came into the road in advance of her;" [Turley, J.]

Norment v. Wilson, 5 Humphreys 310, December 1844. Will: "that the younger children should be educated out of the profits of the farm and the hire of the slaves, . . and that a certain child who was afflicted should always have a slave to wait on him, so long as one belonged to the estate;"

Turner v. Grainger, 5 Humphreys 347, December 1844. About 1840 "a negro girl slave" was sold for $450.

Martin v. Ramsey, 5 Humphreys 349, December 1844. [351] "that if he lost a suit . . he intended the girl Milly to pay the debt, and if she would not be sufficient, Daniel should go to pay it."

Owen v. Owen, 5 Humphreys 352, December 1844. [356] "that the negro is worth from two to four hundred dollars; that he was hired for one hundred dollars per year; and that when put up for sale by the Clerk and Master, he looked badly, as if he was sick. He sold for only one hundred dollars, on six months credit. . . gross inadequacy of price, . . indiscreet . . to sell him under such unfavorable circumstances;" [Green, J.]

Howard v. Clemmons, 5 Humphreys 368, December 1844. "that the negroes were directed to be freed by the last will . . of John Clemmons. . . that the executor has not taken the proper steps for obtaining a legal sanction on the part of the State" The distributees and heirs filed a bill for a distribution of the negroes. "The executor responds, that it is his intention to apply to the County Court . . at the earliest practicable period, for such sanction, and that he has not done so heretofore, on account of the tender age of a portion of the negroes, which renders it improper that they should as yet be emancipated." Bill dismissed. Affirmed.

Puryear v. Thompson, 5 Humphreys 397, December 1844. "an action . . to recover the value of a negro boy, . . killed by the overseer of [Puryear] . . whilst inflicting punishment . . Thompson . . hired . . Harry to Puryear for the year 1842. . . to work in Puryear's factory, where . . Newcomb was . . overseer. . . a difficulty occurred . . when Newcomb attempted to chastise the negro, who ranaway, and did not come home until the next Monday morning. About nine o'clock, . . Puryear had the negro tied . . and after striking him eight or ten licks, he handed the cowhide to Newcomb, telling him 'to give the negro a good whipping—be sure to humble him before you let him down, and then put him to work, for he has had his way long enough.' . . [398] Several hours

after Puryear left the factory, he was informed that . . Harry was dead. . . went home, expressing much regret, . . met Newcomb, who . . said 'he had whipped the negro too much, and was sorry for it.' The negro . . appeared to have been severely whipped, and there were bruises on his head and neck, as though . . made by a piece of timber which lay near, three inches wide at one end, and tapering to the other . . upwards of an inch thick. Newcomb, previously . . had treated the negroes humanely, and had a good character. . . [399] verdict for the plaintiff,"

Judgment thereon reversed and the case remanded: the trial judge did not so charge the jury [400] "as to leave them free to determine . . whether the blows . . were intended by Newcomb to take his life, or whether in his purpose to humble the slave, at all events, he grew . . reckless of the means . . employed, and thereby killed him, not having intended that result."

Peter v. State, 5 Humphreys 436, December 1844. "indicted . . November, 1844, . . for an attempt to commit an assault on . . a free white woman, . . May preceding." Her father, "the prosecutor, . . hired the slave . . of . . the owner . . [437] convicted. A motion for a new trial . . overruled, . . sentenced to be executed."

Judgment reversed: [440] "the record does not satisfy our minds as to the character of the acts committed or intended by the prisoner."

Herron v. Marshall, 5 Humphreys 443, December 1844. In 1828 a negro man was sold for $450.

Gookin v. Graham, 5 Humphreys 480, December 1844. Graham, the former owner of Betsy, and a resident of Alabama, [481] "did . . clandestinely take [her] from the possession of Trousdale [in whose custody she was], and run her to . . Tennessee, where he sold her to . . Campbell . . [482] when persons . . in pursuit of Graham from Alabama arrived . . Campbell concealed the negro"

Booker v. Booker, 5 Humphreys 505, December 1844. Will, 1839: "to his son . . $6000 worth of negro slaves, men to be valued at $600 and women at $400,"

Gift v. Anderson, 5 Humphreys 577, April 1845. [578] "An execution had been issued against the plaintiff in error and was levied upon a negro child of infantine age [with other slaves], and he authorized the sheriff to expose the same [infant] to public sale without" [577] "her presence."

State v. Curtis, 5 Humphreys 601, April 1845. "the grand jurors . . present, that . . Curtis, . . laborer, . . 1843, . . did harbor and conceal . . Mary, . . [602] of the value of five hundred dollars, . . with the intent . . to deprive . . the true owner" [601] "convicted . . and sentenced to three years imprisonment. . . [602] judgment . . arrested, and the defendant ordered to be discharged."

Affirmed: the allegations do not constitute a charge of felony. By the act of 1835, ch. 58, such slaves must have been also persuaded to leave the owner.

Elias v. Smith, 6 Humphreys 33, September 1845. Smith "had recovered judgment against Elias [a free man of color] and executions were levied on Tenor his wife and Daniel his son. This bill was filed to restrain the sale on the ground that the title to the slaves was vested in him for the purpose of emancipating them, and that they were entitled to their freedom and not subject to his debts." [34] "many years ago Elias was emancipated by . . Inman. He was permitted by . . Read, to intermarry with his slave, Tenor; after they had two children, Elias and . . Read entered into a contract, [a covenant under seal], . . that Elias should take the woman and children, and support . . them, until the latter became ten years of age, at which time, . . the two children, should be returned to Read; but the woman was to continue to live with the husband, who was to . . keep her . . from being chargeable to . . Read, or to the county. . . The latter were returned according to the stipulations . . Read died, . . having made no disposition of her. . . his administrator was advised that it might be safe . . at the sale . . to sell the woman and a child then lately born . . Elias, . . after much importunity and with great reluctance, consented to bring them to the place of sale, being assured by the administrator and all the heirs at law that, regarding their father as having purposed her freedom, they had no thought of reducing her and the child to slavery, and that he . . might . . buy them, for a trifle. . . Elias became the purchaser . . for . . ten dollars; . . worth [if slaves] . . six or seven hundred dollars. The other complainants have been born since . . ever since been regarded and treated by . . [35] Elias, and others, as his wife and children, and not as his slaves and property." Bill dismissed.

Reversed. "We decree . . as to the sale of the woman and the children, a perpetual injunction against the defendant, and that he pay the costs in the chancery court, and in this court." "accompanying this transfer of the mere legal title [to Elias], was a trust in favor of the freedom of the wife and children, arising necessarily from the very nature of the whole transaction. . . [36] But as Elias has power to emancipate . . with the consent of the County Court . . it is not clear that this court . . is the proper forum . . to give the consent of the government. Let application be made to the County Court." [Reese, J.]

King v. Smith, 6 Humphreys 55, September 1845. "King died [in 1798] having made his wife tenant for life of certain slaves by his will, with remainder to his children. The widow [in 1832] sold" Amy and her two children to Sharp for six hundred dollars. He "was informed of the facts in regard to title. He sold the slaves to a negro-trader who removed them beyond the limits of the State."

Held: Sharp [58] "was bound to hold them subject to the rights of those in remainder. . . the remainder-men are entitled to their delivery, or compensation."

Vanleer v. Fain, 6 Humphreys 104, December 1845. "An auctioneer in Nashville read out . . the terms of the hiring of the slaves of Fain . . 'not to be removed out of the county . . the person who hires them to furnish them with one summer suit and one winter suit of new clothes,

with shoes and blanket each; bond with . . security required when the slaves are delivered.' Joiner, agent for Vanleer, Hicks and Co., hired Philip for $140; . . did not hear any restrictions as to . . where the slave was to be employed." He [106] "executed the note in pursuance of the terms of the contract, but not specifying therein that the negro was not to be removed out of the county. The negro was . . [107] removed out of the county . . and employed at the iron works of the defendant, where, in the course of the year, he sickened and died." [105] "proved to be worth from $700 to $800. . . The jury returned a verdict for . . $583." Judgment thereon, affirmed.

Jones v. Marable, 6 Humphreys 116, December 1845. "Mary W. Jordan was the daughter of the complainant [Mrs. Jones], . . 1842, she intermarried with the defendant . . [117] in Arkansas," where she had removed "about two years before . . from Tennessee . . taking her negroes with her, . . shortly after the marriage, the parties came to Tennessee, where the defendant commenced building . . had despatched an agent to Arkansas for her negroes, but they had not been removed at the time of her death [in December 1842]. . . By an act of the Arkansas legislature, . . 1840, it is enacted, 'That slaves . . hereafter shall descend . . as real estate,'" Held: [119] "the complainant is entitled to the negroes . . by inheritance, according to the laws of Arkansas."

Reuben v. Parrish, 6 Humphreys 122, December 1845. The will of Elizabeth May, who died in Kentucky, in 1840, "directed that all her negroes . . should be emancipated at her death." Her executor "removed the negroes from . . Kentucky to . . Tennessee, the former place of residence of the testatrix, where they have been ever since kept by, and hired out by him; . . bill . . filed on the part of the negroes, to have a decree of emancipation . . [123] and for other . . relief," [122] "The presiding chancellor dismissed the bill, and complainants appealed."

Held: the Kentucky acts of 1798[1] and 1800[2] [123] "establish beyond a doubt the right of the complainants to as full freedom in . . Kentucky, as if they had been born free, from the date of the probate . . The provision of the act of 1799, which gives the County Court full power to demand bond . . [126] for the maintenance of any . . slaves that may be aged, or infirm, . . is not a judicial act necessary to perfect the emancipation, but a mere police regulation, . . We are, therefore, of opinion that these complainants . . have been wrongfully removed from Kentucky . . and that the defendant is chargeable to them for all sums of money, or other things, received by him, the proceeds of their labor, during the time he has had them in his wrongful possession, and that he account . . Decree accordingly." [Turley, J.]

Martin v. State, 6 Humphreys 204, December 1845. [205] "The indictment[3] alleged that . . 'Martin . . 1845, . . was guilty of selling spirituous liquors to a . . slave, . . without a permit in writing from his master,' . . convicted . . sentenced to imprisonment for ten days and to pay the costs of the prosecution."

[1] Morehead and Brown's *Digest*, p. 608.
[2] *Ibid.*, p. 609.
[3] Under the acts of 1829, ch. 76, and of 1842, ch. 141.

Affirmed: [206] "there may be no overseer or agent—in nine cases out of ten there would be none, and why negative that which may by bare possibility exist,"

Hester v. Wilkinson, 6 Humphreys 215, December 1845. [218] "removed [from North Carolina] to . . Tennessee, bringing with them the . . slaves. . . [219] The slaves were women and children, whose services could not be very profitable;"

Hoggatt v. Bigley, 6 Humphreys 236, December 1845. [237] "A watchman apprehended . . Jim [in 1843], . . for violating the corporation ordinance of Nashville, in hiring his own time, and carried him before . . a justice of the peace . . [who] 'committed [him] to jail . . the owner refusing to pay the fine.'" [1] Held: [239] "This Ordinance is not repugnant to the State Law," [2]

Fletcher v. State, 6 Humphreys 249, December 1845. "The indictment charged that Fletcher . . passed five pieces of counterfeited coin to . . a slave,"

Held: [256] "much better to charge according to the fact, . . than merely according to the legal effect."

Jenkins v. Brown, 6 Humphreys 299, December 1845. John and Tom "were barbers in the town of Columbia acting for themselves with the permission of their masters. They earned a large sum of money which was placed in the hands of . . Brown to be . . loaned out, and he loaned . . to Jenkins, . . When . . due he instituted suit . . suit was dismissed upon an agreement that Jenkins should have three years time, . . and notes [for $2424.37] taken accordingly. . . this bill was filed . . to restrain the collection . . dismissed"

Affirmed: [302] "the money loaned belonged to [their masters] . . to whom [Brown] . . is responsible for the payment . . clearly entitled to recover it back from those to whom he loaned it, and in the absence of objection on the part of the masters, it does not lie in the mouths of the borrowers to object to the refunding the sum borrowed upon the ground that it was . . the money . . of third persons." [Turley, J.]

Croft v. State, 6 Humphreys 317, December 1845. "convicted . . for stealing a slave. . . was arrested with the slave in his possession in Illinois;" "sentenced to five years confinement in the penitentiary." Affirmed.

Read v. Bostick, 6 Humphreys 321, December 1845. [322] "the real estate consisted of lands considerably worn, . . deemed . . less valuable . . than the negroes. A bill was filed for the sale of the lands for the payment of debts." So decreed.

Irwin v. Burnett, 6 Humphreys 342, December 1845. "in 1840 the defendant sold in . . Nashville, at auction, a negro man slave to . .

[1] Nashville ordinance of 1840, sect. 11, "which imposes a fine of twenty dollars for a slave hiring his own time, and imprisonment of the slave if the owner refuse to pay the fine." *Ibid.* 239.

[2] Act of 1777, ch. 6, sect. 5. Car. and Nich. 675.

Robertson, a steamboat captain, engaged in the Nashville and New Orleans trade, for . . [343] seven hundred and five dollars. . . in a few hours . . he put the slave on board a steamboat and sent him forthwith to the south . . the security was not satisfactory to [the defendant] . . and he caused the note to be returned to the maker [a friend of Robertson] . . did not doubt that Robertson would surrender . . the slave, and proposed to sell him to the complainant . . [also] a captain of a steamboat, engaged in the trade between Nashville and New Orleans, . . agreed . . when he first saw Robertson, . . after the return of the latter from the Republic of Texas, . . he was informed . . that he had left the slave . . in Texas, and that he would not be delivered up . . In fact, it is probable that by the laws of the United States, he could not then have been delivered to him within the United States as a slave, after having been so taken to Texas." Bill to enjoin the enforcement of a judgment recovered on the note executed by Irwin for the slave.

Held: [344] "The slave . . was as much lost to the complainant as if he had been dead. . . entitled to the relief prayed for"

Yeatman v. Hart, 6 Humphreys 375, December 1845. "the slave had been employed on board a steamboat, where he became sick with a disease of the bowels, which resulted in mortification and death in two days after the boat arrived at Nashville, when a physician was for the first time called in. . . The boy told him he had been sick three weeks with dysentery. . . [376] The jury found for the plaintiff,"

Judgment thereon, affirmed: "the declaration of the slave . . [was] clearly admissible."

Turner v. Petigrew, 6 Humphreys 438, April 1846. "the negroes . . were sold, in order to make distribution among the heirs;"

Ballard v. Jones, 6 Humphreys 455, April 1846. [456] "the slave was one of peculiar value, worth not less than a thousand dollars; he had been brought up from infancy with the complainant, who was a young man, and they were reciprocally attached to each other; the slave had been mortgaged to a person in the neighborhood for . . $325, and was in his possession, and, as complainant believed, about to be lost to him. . . applied to the defendant for a loan of three hundred and twenty-five dollars . . advanced . . slave redeemed." [455] "Jones took a bill of sale" [456] "It acknowledges the payment of . . eight hundred dollars. . . [But nothing] [457] more than the three hundred and twenty-five dollars was advanced. . . The slave . . would have hired at least for a hundred dollars per annum. . . the negro subsequently ran away." Held: "a most unquestionable case of mortgage;"

Alston v. Boyd, 6 Humphreys 504, April 1846. [505] "1825, his mind became diseased, . . [506] got a fancy that something was in his head . . offered his slave his freedom if he would split his head open with an axe."

Farnsworth v. Earnest, 7 Humphreys 24, September 1846. In 1839 "the defendant . . made a public sale . . among other things the negro boy . . the complainant being the purchaser at . . four hundred dollars.

At the sale the boy was crying, and complainant was unable to judge of his mental capacity, . . [25] proof . . that the boy is ignorant and dull . . not worth more than half the value of a sprightly sensible boy of the same age." Bill to enjoin a portion of the price was filed in 1844. Dismissed.

Decree affirmed: "he may be greatly deficient in skill in the management of horses, arranging the harness, etc., and yet for the ordinary services of a field hand, it is probable he will be found equal to other slaves of his age." [Green, J.]

Kennedy v. Williams, 7 Humphreys 50, September 1846. Reese, J.: [53] "The value of slaves depends upon physical strength, upon intellectual capacity, upon mental culture, upon moral worth, as fidelity, honesty, obedience, etc., and upon handicraft skill, in short upon a thousand things; it is only in the wretched market of the mere slave trader, that his value can be rated by pound averdupois [*sic*]."

Ford v. Ford, 7 Humphreys 92, September 1846. "Loyd Ford . . 1840, made a will, which directed an emancipation of his slaves, John Ford and others, and appointed two of his sons . . ex'rs. The sons refused to act . . and the slaves by their next friend, Phebe Stuart, offered the will for probate" [98] "the negroes were reputed to be the children of the testator. . . the testator had frequently said that they were" Green, J.: [95] "A slave is not in the condition of a horse . . he is made after the image of the Creator. He has mental capacities, and an immortal principle in his nature, that constitute him equal to his owner, but for the accidental position in which fortune has placed him. . . [96] the laws . . cannot extinguish his high born nature, nor deprive him of many rights which are inherent in man. . . he can make a contract for his freedom, which our laws recognize, and he can take a bequest of his freedom, and by the same will he can take personal or real estate."

Bob (a slave) v. State, 7 Humphreys 129, December 1846. "indicted . . convicted of murder, and condemned to be hung. . . the record does not show where the court, by whom the indictment was taken, was holden." Held: "the omission is fatal, . . Reverse the judgment, and remand the prisoner . . to be proceeded against."

Runyan v. Caldwell, 7 Humphreys 134, December 1846. "Caldwell hired the negro for the year 1841, to . . Downs, who hired him to Runyan . . [who] employed the boy as a ferryman, . . he disappeared, . . Whether the negro is dead or has escaped . . is not clear from the proof."

Prince (a slave) v. State, 7 Humphreys 137, December 1846. "Prince, . . the property of . . London, was indicted for robbery . . and acquitted. . . [138] the costs and attendance of . . witnesses amounted to . . two hundred and eleven dollars six and a fourth cents, part of which had been paid . . by . . London"

Held: [140] "the act of 1819, (N. and C. 679,) . . is to be expounded, as limited to the costs of the prosecution, . . The slave is in the same category with the free man in that respect, and the witnesses for him are in no worse condition, than he who is witness for an insolvent free man;"

Duncan v. State, 7 Humphreys 148, December 1846. "Duncan, was indicted [1] [in 1845] and convicted . . for unlawfully carrying away a slave by steamboat," [151] "He did not receive the negro, and when he ascertained that he was on board of his boat, he made use of all reasonable exertions to secure him, and he fled and could not be overtaken." Judgment arrested and the defendant discharged.

Williams v. McCormack, 7 Humphreys 308, December 1846. "became the purchaser [December 1841] of a girl . . at . . $526. About a year after . . the girl died, . . [309] the proof shows, that this girl had not been hired out during . . 1841, on account of her bad health; that during that year she had been treated by Mrs. King, a doctress . . and had greatly improved in her appearance. Mrs. King and other witnesses thought she was well." No fraud.

Tubb v. Williams, 7 Humphreys 367, December 1846. [368] "Jacob, by the negligence, if not contrivance of defendants, secured his freedom [[371] 'as early as 1841 '] by escaping to Illinois,"

John v. Tate, 7 Humphreys 388, December 1846. "John, Andrew, Isaac, Charity and Cina, by their next friend, filed their bill . . [which] charges, that Ignatius Jones made his . . will . . 1824, . . that by said will the complainants were entitled to their freedom after the expiration of certain periods, which had elapsed, . . will was regularly proven [in 1824] . . That Tate, the executor, who had married the daughter of Jones, fraudulently procured the widow . . [389] to contest . . the probate was set aside [in 1827] . . and the complainants were distributed . . Tate . . denied . . stated, that . . John was given to him by Jones in his lifetime," [392] "told . . Oneal, that if the negroes had sense enough, they could get their freedom."

Decree in favor of the complainants, affirmed: [392] "the probate of 1824 . . becomes reinstated . . [393] As to the claim . . to . . John, . . we are satisfied, from the proof, that no such gift was made. . . the testator died before the passage of the act of 1829. The complainants may therefore apply to the County Court . . to be liberated . . the cause will be retained in this court, that after such emancipation . . an account may be taken, and the rights of the parties adjusted in this cause," [Green, J.]

Sypert v. Sawyer, 7 Humphreys 413, December 1846. "executor . . sold a slave, Eda, at public auction [for $400] . . cried off as sound, healthy, and sensible, . . was afflicted with scrofula . . bill . . filed . . to enjoin the collection of the purchase money" Held: [414] "no fraud . . the complainant must be left to his remedy at law"

Webb v. Patterson, 7 Humphreys 431, December 1846. [432] "it further appeared to the court, that . . Tom [taken as security by Patterson] was of bad character and habits, and addicted to running away; that he was uncontrollable and difficult to be retained in servitude; that . . Foster purchased him in irons [[434] 'as a runaway slave in Alabama;'] . . did not communicate [these traits] . . to . . Patterson,

[1] Under the act of 1833, ch. 111.

. . that a day or two after . . Patterson took possession . . he ran away . . that . . Patterson advertised, offered a reward, and used all diligence to recapture him—but that he failed to do so until he had lain in jail [in [434] 'Kentucky, where he had been taken up and kept in jail as a runaway slave, for nearly a year;'] . . that after said slave was recaptured, he was detained in jail to prevent his running away."

Held: [435] "a fraud upon Patterson." Webb and Foster "ought to pay these expenses."

Washington v. Johnson, 7 Humphreys 468, December 1846. "action of debt . . Johnson tendered [in payment] a negro girl, . . aged fifteen, at the price of 825 dollars. Washington objected to the price, but took the girl on trial, . . January, 1842. She remained in his possession till . . [469] October, 1843, when she died of common autumnal fever, without neglect . . The presiding judge . . charged the jury . . that . . goods . . must be returned in a reasonable time, or the sale becomes absolute. . . [470] verdict in favor of the plaintiff for the balance of the debt deducting the price of the slave." Judgment thereon, affirmed.

Carey v. State, 7 Humphreys 499, April 1847. "Carey was indicted in the . . Court at Memphis, under the act of 1829, ch. 23, sec. 22, for slave stealing." [500] "the hirer of the slave . . testified that . . 1846 . . August he was in the act of inflicting corporal punishment upon the slave, when he broke loose from him and ran away. . . He sought diligently for the slave for three weeks . . and could hear nothing. He afterwards heard of him in . . Mississippi. On the 28th of September, in . . Mississippi, two hundred miles from Memphis, the prisoner brought the slave with him in the stage coach and stopped at a tavern; he claimed the slave as his; he used no force to restrain or art to conceal him." Verdict of guilty. Judgment thereon reversed and a new trial granted: "no proof that the slave was stolen by any person"

Taylor v. State, 7 Humphreys 510, April 1847. "indictment . . 1846, . . charges that the defendant sold spirituous liquors to . . a negro slave . . without a written permission from his owner."

Held: the indictment is defective. [511] "the act of 1842 [ch. 141] . . repeals ['by implication'] the act of 1829 [ch. 76], . . The act of 1829, required . . that the permission should be in writing; the act of 1842, nothing but a permission."

State v. Weaks, 7 Humphreys 522, April 1847. "The defendant was indicted[1] . . for permitting [in 1844] a slave, his property, to trade in spirituous liquors as if a free person of color. . . found guilty . . judgment . . arrested,"

Judgment reversed: it was not necessary to allege [523] "that spirituous liquors were actually sold to any one. If the slave have his shop, and . . is seen waiting on customers . . The defendant will be fined five dollars."

[1] Under the act of 1839, ch. 47.

Gilbert v. State, 7 Humphreys 524, April 1847. "indicted . . for the murder of his master, . . found guilty . . and sentenced to be hung. . . appealed." "The principal witness for the prosecution, (Jackson, a black boy, about 17 years old,) . . [525] says, that himself and the prisoner [his half brother] were sent to a tobacco barn to strip tobacco, (the prisoner taking . . a large hickory stick . . he had cut the day before,) that after . . a short time their master came, and . . while he was . . stripping tobacco, Gilbert . . struck the deceased on the head, . . that the deceased fell and did not speak. The prisoner then sent the witness for fire, which he brought, and then ran . . soon afterwards saw the barn . . on fire, and the prisoner . . told him they must say the barn caught on fire, . . and their master got burned up; . . The deceased was an old and very nearly blind man. . . in the evening . . a great many persons were collected . . he told them . . that he and the prisoner . . could not get their master out, that J. E. Porter and others caught witness, and tied him and took him to a log and told him, they intended to make him lay there until they whipped him to death, if he did not tell . . he then told them the prisoner killed him, the witness stated he was scared nearly to death, and would have told . . any tale in the world, true or false, . . and that he would be afraid to tell any other tale than the one he told the men if it was a lie; he was not afraid to tell the same tale . . because it was the truth. . . [526] the prisoner had whipped him frequently severely, and he sometimes would have been willing to see him hung, but they were friendly the day of the murder. The deceased was a kind master. The witness . . said he was afraid of Gilbert. . . [528] Coleman [another negro boy] says, that the prisoner had a wife at his master's house, and that he wished to leave her and get a girl of Dunlap's for a wife, but that his master refused . . Coleman heard the prisoner threaten his master's life several times, and had seen him with the hickory, which he called the peace-maker. . . [529] The [master's] purse [was] hid out by the prisoner eighty yards from the barn, and he does not attempt to account for the manner in which he got it; . . his master . . was kind and indulgent to him, and that he could not hope to fall into better hands. . . [530] On the trial J. C. Porter proved that he saw blood on the prisoner's pantaloons, . . After the trial the prisoner filed his affidavit, stating that he was surprised by this testimony, . . that on the morning the barn was burned, he went hunting, and his dogs treed an opossum . . bit it . . bled freely, . . Marr made affidavit that . . the opossum . . was very bloody, . . did not tell the prisoner that he knew these facts until after the proof was closed"

Judgment affirmed: [528] "we think there can be no doubt of the truth of Jackson's testimony" "we do not think that the witness, agitated by extreme alarm as he was, could have fabricated a tale so consistent and probable . . [530] the affidavits make out no case of surprise" [Green, J.]

Nelson (a slave) v. State, 7 Humphreys 542, April 1847. "Indictment for murder" "when the deceased [a white man] after having been wounded, was brought to the house, he told his wife 'not to be alarmed,

that he . . was not going to die.' About ten minutes afterwards, . . told . . Mangum that Nelson . . 'had stabbed him.' . . witness . . thinks he was trying to say, 'that Nelson had tried to kill him two or three times before,' . . [543] that the prisoner had stabbed the deceased . . was not disputed . . The object of this proof was . . to show malice." He was [542] "convicted and sentenced to be hung." Judgment reversed, and a new trial granted: [543] "This testimony was illegal."

Tom (a slave) v. State, 8 Humphreys 86, December 1847. "Tom was indicted . . for an assault . . with the intent to commit murder in the first degree." [87] "absconded . . and while concealed in the woods, fired a pistol . . at . . Haley, giving him a severe wound . . in his right arm. Haley was . . hunting and came . . unexpectedly upon the prisoner concealed behind a log, . . convicted" "sentenced to be executed."

Turley, J.: [87] "fairly to be inferred that the prisoner supposed he was in pursuit of him, . . [88] no offence for any individual to arrest a runaway slave, . . if he resist it and slay . . he is guilty of murder in the first degree, . . It may be painful to the feelings to hold such doctrine, but it is a necessary incident to the institution of slavery. . . no pretence whatever for the assault, however the prisoner no doubt thought otherwise, . . however much we may regret the consequences, we must affirm the judgment."

State v. Brown, 8 Humphreys 89, December 1847. "Brown ['a grocery keeper'] was indicted . . for permitting an unlawful assemblage of [ten or more] slaves on his premises.[1] . . found guilty . . the judge arrested the judgment." Reversed: [93] "order that he be fined five dollars,"

Turnpike Co. v. Young, 8 Humphreys 103, December 1847. "six negro men which the company had hired to work on the road and keep it in repair,"

Marshall v. Stephens, 8 Humphreys 159, December 1847. In 1829 Alley and her child were sold for $400.

Lewis v. Simonton, 8 Humphreys 185, December 1847. "Moses Lewis, a free person of color, filed this bill . . charged . . that he was the owner of a note [for $400, given for his services before his emancipation, but after he was entitled to enjoy the fruits of his labor] . . and that defendant seised [*sic*] him and kept him imprisoned, and threatened him with a criminal prosecution, and thereby . . compelled him to surrender . . the note . . a final decree in favor of the complainant, directing the delivery of the note . . to the complainant, and in the event of failure . . that execution should issue against the defendant for the amount of the note and interest . . the defendant appealed" [187] "It is insisted, that, . . the complainant . . is still a slave, . . it appears that in . . 1835 the complainant purchased his freedom from . . Topp [a non-resident], at . . $1000. . . the complainant . . was residing

[1] Act of 1831, ch. 113, sects. 1, 2.

with . . Martin, in Giles county, . . He had a wife and child, . . residing in said county, whose freedom he also wished to purchase, and he desired to remain in this state until, from the proceeds of his labor, he could realize money enough to enable him to do so. But as he could not remain . . if emancipated, it was mutually agreed . . that his emancipation should be postponed for a time, and that Topp should make a conveyance of complainant to Martin, in trust, to permit him to labor for himself . . until such time as he should desire to be emancipated; . . Some years afterwards, the complainant having removed . . Martin being unwilling to remain longer responsible . . executed a . . bill of sale of complainant and his wife, (the complainant having purchased her freedom in the mean time,) to . . Buchanan, of Lawrenceburg, which shows . . the trust in favor of complainant and his wife . . [188] Buchanan, in . . 1843, or . . 1844, . . in writing, on the back of the bill of sale . . disclaimed his acceptance thereof, and all right . . to the complainant and his wife; . . 1845, the complainant was desirous of removing from this state; and for the purpose of enabling himself and wife to obtain their emancipation, . . Martin conveyed them to . . Stephenson, and . . Stephenson presented a petition to the county court of Lawrence county for their emancipation, . . granted; . . and bond . . given for their removal from this state; they shortly after removed to . . Illinois. The record of the emancipation . . forms part of the bill; the bill of sale . . to Buchanan . . also . . but the disclaimer . . by Buchanan, is not produced, nor proved."

Held: [190] "the validity of the emancipation . . is not affected by the omission either of Topp, . . or of Buchanan, the trustee, to present the petition . . the proceedings of the tribunal entrusted by law to give the assent of the state cannot be impeached, when collaterally brought in question, unless upon their face they be absolutely void. . . [191] his freedom will be held to relate back ['to the time when the right first accrued'], to entitle him to recover the proceeds of his labor wrongfully extorted from him during such interval. . . Decree of the chancellor . . affirmed with costs." [McKinney, J.]

Patton v. Overton, 8 Humphreys 192, December 1847. [193] "returned [in 1836] to Tennessee [from Louisiana], bringing with them their . . [inherited] slaves,"

English v. Tomlinson, 8 Humphreys 378, December 1847. [383] "Tomlinson on the day of the sale [in 1843], deterred bidders by representing . . that Arrowsmith was to purchase the negroes, [[382] 'in order, that they might be kept together,'] and permit him to redeem them. By this means the negroes [[381] 'a woman . . and her two children, a girl 7 years old, and a boy 5 years old'], worth $700, were sold for only $501."

Mullen v. Ensley, 8 Humphreys 428, December 1847. "Jordan was hired . . put to the business of blasting rock, for the construction of a turnpike. . . was 'blown up,' one of his eyes put out, and one of his hands severely injured."

Held: [429] "not an ordinary and usual" employment. Decree against the defendant for $250, [428] "the amount of the deterioration in the value of the slave," with interest from the date of the accident, [429] "and that no more hire should be allowed after the accident, than . . could have been had."

Bowling v. Stratton and Swann, 8 Humphreys 430, December 1847. "action . . for the loss of a negro man . . hired . . and never returned: . . [Cheatham's] father [then the guardian of the heirs] requested him to . . take the note of . . Swann for $100, for the hire of Edmund for the year 1845, . . [431] That his father had permitted the negroes . . to seek the places or masters to whom they wished to be hired; . . that Edmund was thought to be a good and trustworthy boy. That . . in the summer . . Swann stated to him that Edmund was desirous of making something for himself, by driving a hack, and asked . . if there would be any impropriety in permitting him . . he replied, he thought not, . . that he went to Memphis with his hack in the fall, . . remained a month or two, that the mother and sister of Edmund lived in Springfield [where the guardian lived], . . usual for him to visit them occasionally, that he had been hired at the Inn in Nashville for several years previous, . . Philips . . summer of 1845, . . sold a horse to . . Edmund, with the consent of the defendants, and took his note . . that he acted as a free person of color, . . that . . about the 23rd of December, he showed him a pass signed by one of the defendants, permitting him to go to Springfield, . . [432] about 25 miles from Nashville, that he, witness, hired him a horse to ride there, . . has never since seen either him or the horse. . . appeared from the testimony of . . Bateman, who had been in the habit of hiring out negroes for a long time, that it was not the custom to make a formal delivery of them at the expiration of the time . . but that they were allowed to go at large, and to return home at the end of the year: and that it was usual to give hired negroes some days holiday about Christmas." Verdict for the plaintiff.

Judgment thereon reversed and the case remanded: [434] "The defendants were clearly justifiable in giving him a pass to go to Springfield,"

Williams v. Otey, 8 Humphreys 563, December 1847. [565] "6th day of September 1834, Kitty was sold by a constable . . [to] Otey at the price of $401, . . 20th . . of September . . trustee, sold at public sale . . [her children] Lucinda and Albert, to . . Parish . . 1836, . . Parish sold . . Lucinda to . . Whyte, . . 1841, . . Whyte having . . died, Lucinda was sold at public sale . . to . . Rupe, who . . 1842, sold . . her to Susan A. Whyte, . . 1839, . . Parish sold . . Albert to . . Tappan, . . levied upon . . [566] and sold . . 1840 . . [to] Thompson,"

Jim v. State, 8 Humphreys 603, April 1848. Jim, a free person of color, was indicted[1] for obtaining five dollars on the false pretence of making a final payment on a wagon and harness which he pretended to have bought for Massey. [604] "found guilty . . and sentenced . . to three years imprisonment in the penitentiary," Affirmed.

[1] Act of 1842, ch. 48, sect. 1.

Mayor v. Winfield, 8 Humphreys 707, April 1848. "Winfield, a free man of color was arrested by a watchman after ten o'clock at night, in the streets of Memphis, and lodged in the city prison, where he remained till morning. On payment of ten dollars he was discharged, . . [708] He procured the issuance of a warrant against the corporation, which was returned before Roland, a justice of the peace, who rendered judgment for ten dollars, declaring the ordinance [1] . . void. The city authorities appealed to the commercial and criminal court, . . tried . . by judge King. He was of the opinion that the ordinance . . was oppressive and void, and affirmed the judgment"

Affirmed: [709] "This new curfew law . . is high handed and oppressive, and enacted . . without any authority . . A free negro is not . . a citizen of full privileges in our state, but still he is a free person, and cannot be punished in this summary mode ['without trial'] . . for an act innocent in itself, . . The lot of a free negro is hard enough at the best, . . and it is both cruel and useless to add to his troubles by unnecessary . . restraints . . in cities, very often, the most profitable employment is to be found in the night, loading and unloading steamboats and other craft, waiting about hotels, theatres, . . [710] the various handicraft employments, such as that of barber, . . sources . . of much profit to the free man of color, and you . . deprive him of them entirely, if you compel him, like a wild beast, to hide his head in his den from ten o'clock till daylight," [Turley, J.]

Wiley v. Lashlee, 8 Humphreys 717, April 1848. [718] "Jesse [was sold at administrator's sale] for $560 00, Maria for $483 50, and Mary for $13 12½,"

State v. Brady, 9 Humphreys 74, September 1848. "indictment upon the Act of 1822, ch. 19, sec. 3. . . charges . . that . . Brady, a mulatto man and . . a white woman, did unlawfully live together as man and wife, . . jointly convicted, and judgment was pronounced upon the [woman] . . but . . arrested . . as to . . Brady,"

Affirmed: [75] "the statute is obviously confined to one of the parties, viz, the white man or woman who 'shall presume to live with any negro, mustee or mulatto . . as man and wife:'"

Harry v. Green, 9 Humphreys 182, September 1848. "The last will . . of . . Solomon Green [proved 1841] . . [183] contains a bequest of freedom to all of the slaves . . by name. The executors . . renounced the execution . . Green became administrator . . refused to apply to the County Court by petition, to obtain the emancipation of the complainants, and they come into the Court of Chancery for a decree . . there are demands against the estate that cannot be satisfied, unless the complainants shall be held to servitude," The chancellor decreed that the complainants should be sold to pay the debts.

Decree reversed and the cause remanded: [185] "The complainants are legatees of their own freedom, and this is a specific legacy. In case

[1] Ordinance of Mar. 18, 1839: "it shall be the duty of the watchmen to arrest any free negro or slave . . out after ten o'clock, and lodge them in the calaboose, . . till next morning, . . If a free person of color, he . . shall be fined . . ten dollars,"

. . [of] a deficiency of assets . . the complainants must contribute . . And should they fail to raise the money . . they will be placed in the hands of a receiver, and hired out, until the debts shall be paid;" [Green, J.]

James v. State, 9 Humphreys 308, December 1848. [310] "Morrow . . had said to defendant [his slave] that he might go and be free, . . but . . had executed no writing . . nor had he made any application to the County Court" [308] "James, acting as a freeman, sold spirituous liquors without license. . . indicted . . found guilty . . and fined"

Judgment reversed and the case remanded: he is not indictable for a misdemeanor, as a freeman. [311] "has an incomplete right to his freedom, so that his master could not re-assert his dominion . . not a freeman, until the State . . consents . . Until that is done, the master may be indicted for permitting him to act as a freeman, and is liable to all the other consequences that would have existed, if he had not consented" [1]

Hackney v. Hackney, 9 Humphreys 450, December 1848. "owner of about one hundred and sixty acres of land, fifteen or twenty slaves,"

The Case of F. Gray, 9 Humphreys 513, December 1848. "Frances Gray presented a petition to the Circuit Court . . stated that the County Court . . had emancipated her on the petition of her master, and that she had given security to remove beyond the limits of the State; . . at the same time . . presented her petition to the county court 'setting forth . . [514] that long before . . 1836, she was in this State, . . had several children belonging to citizens of the county, . . without husband or friends beyond the limits of the State, she desired to remain . . and proposed to enter into bond conditioned that she should not become chargable [*sic*] . . and that she had introduced indubitable testimony as to her good character, . . That the county court . . refused . . petitioner prayed an appeal; . . refused.' This petition prayed a writ of *certiorari* . . The circuit court refused"

No error: [515] "the unlimited discretion with which the county court is invested by the act of 1842, ch. 191, sec. 1, to adjudge whether . . consistent with the . . policy of the State to permit any manumitted person . . to reside [here] . . is not subject to the . . control of the superior judicial tribunals. . . [516] it would avail nothing to show, as we think might easily be done, that in acceding to the prayer . . the . . humane views of the legislature would have been better effectuated by the county court. . . The refusal of the county court . . however, will not preclude the petitioner from renewing her application to the same court, or to the court of any other county in the State." [McKinney, J.]

Goodloe v. White, 9 Humphreys 528, December 1848. "White sold a negro [for $600, in 1833] to . . Goodloe, and executed a warranty that the negro . . was a slave for life. The negro brought suit for his freedom and recovered it;" [531] "1846, the plaintiffs brought an action for a breach"

[1] See Morrow *v.* State, p. 541, *infra*.

Held: [532] "the contract of warranty was broken as soon as it was executed, . . The statute of limitations commences running immediately,"

Young v. Jones, 9 Humphreys 551, December 1848. [552] "The farm was conducted principally under the direction of a negro man, Mrs. Wair's father permitted to work for her."

Nancy v. Wright, 9 Humphreys 597, December 1848. Bill by the complainants "to have their freedom declared, . . under the will of Abram Earhart, made . . in . . North Carolina . . 1812. . . 'After the death of my wife . . I allow my executors, at the expense . . of my estate, to use their endeavors to have the whole of my negroes and their increase removed into . . [598] Ohio, and set free agreeable to the laws of said State, and in case that cannot be accomplished, I will the whole . . to my brother . . and his children' . . After the death [of the widow,] . . the executors . . delivered" the negroes to those devisees who removed them to Tennessee and sold them to the defendants. Bill dismissed.

Decree affirmed: I. [599] "no emancipation could be effected [in North Carolina] . . in the manner provided for in this will: . . [II.] [601] The negroes as slaves could not have been legally introduced into . . Ohio[1] there to be emancipated; [III.] they could not, as free men, have been introduced into the State, without the bonds required,[2] and it is obvious that these North Carolina executors could not have procured these bonds. [IV.] But it is said that by what may be called the common law of Ohio, a slave . . carried there voluntarily by his owner, is *ipso facto* free; . . [602] The executors refuse . . we . . have no power over them. . . [V.] [603] we cannot . . hold, that if an executor be instructed to carry a slave to a free State . . he shall be considered to have done so, though he never has" [Turley, J.]

Isaac v. McGill, 9 Humphreys 616, December 1848. Bill "to have their freedom declared" Will of James McGill, who died in 1833: [617] "I will . . to my wife, Nancy . . all . . during her . . life, or widowhood; at her death, or marriage, I will that all my negroes, with their posterity, . . be sent to the colony in Africa. I also leave it to the pleasure of my wife to send a part or all . . before her death, if she think proper and they are willing; if they are not willing . . she can dispose of them as she may think best." The negroes "were retained in her service until her death, . . 1840. . . her will . . : 'that my black people be free from me, my heirs and estate forever.' . . several legacies to some of the complainants. . . The executors have taken no steps to emancipate . . but . . David McGill claims the complainants as his slaves. . . insists . . slaves were unwilling to go to . . Africa during the life time of . . Nancy; . . [618] states that at the earnest solicitation of the complainants, he has purchased them for . . fifteen hundred dollars, from the other distributees, . . The Chancellor decreed . . complainants . . entitled to their freedom, on entering into bond . . to

[1] Ohio act of Jan. 5, 1804. Statutes of Ohio, p. 592.
[2] Ohio act of Jan. 25, 1807. *Ibid.*, p. 593.

leave the State;" [616] "allowed six months . . also . . entitled to . . legacies . . and directed an account for the value of their services."

Affirmed: [619] "there were only casual conversations . . in which some . . expressed their unwillingness to go to Africa. To hold that such conversations . . should be their solemn decision to remain slaves, rather than be free, would outrage every principle of justice." [Green, J.]

Morehead v. State, 9 Humphreys 635, April 1849. Morehead and Bryant "were indicted and convicted, jointly, of the crime of stealing a . . slave . . June, 1847, said slave absented himself . . and was advertised as a runaway. . . August . . the prisoners were arrested . . had said slave concealed . . two or three weeks . . afterwards . . Bryant run said slave to Mississippi and sold him to . . [636] Norwell, . . failing to make payment, Bryant took the slave back, and placed him in the hands of . . a confederate . . to be run elsewhere and sold; . . the Circuit Judge instructed . . that a runaway slave was presumed to be in the possession of his master, and was the subject of larceny."

Affirmed: [638] "he . . cannot be, lost in the sense in which . . even a horse, may be lost."

Collomb v. Taylor, 9 Humphreys 689, April 1849. [694] "1844, . . she was stolen or enticed away [from her owner in Louisiana], and conveyed first to Vicksburg . . and soon afterwards to Memphis. . . sold at auction, at the instance of a stranger, and under circumstances which excited doubt as to the title, and after some two or three intermediate sales, was sold to the defendant in error, . . 1845, . . Mrs. Bond [mother of the rightful owner] . . procured the plaintiff in error . . to take all . . measures . . necessary to regain the . . slave. . . about an hour after . . [he] arrived at Memphis . . he saw the slave . . coming towards him on . . street alone, . . quietly took possession . . afterwards conveyed her to Louisiana." Taylor brought an action of trespass *vi et armis*. Verdict in his favor and damages [695] "assessed . . to five hundred and thirteen dollars,"

Judgment reversed and the case remanded: [700] "if the slave be found off the premises of the person having had the possession, the owner may lawfully recapture him, provided he do so without force or breach of the peace."

Price v. Allen, 9 Humphreys 703, April 1849. [709] "Allen . . agrees to give . . Price the use of . . Elleck, from [April 11, 1846] . . until Christmas; and . . Price . . delivers to . . Allen, one mule, of the value of sixty dollars, as compensation ['to remain . . until . . the time expires.'] . . Price is to find two suits of Summer clothing for said boy;" Price [710] "retained the slave in his own . . service until after his tobacco crop was gathered; and then hired [him] . . till Christmas, to . . Edwards, who took him . . [to] the Mississippi river, . . to cut wood" He became sick and died. "evidence was introduced . . of a verbal agreement . . previous . . that the slave was to be employed by Price . . on his farm, . . [711] verdict for five hundred and ninety-four dollars damages,"

Judgment thereon reversed, and the cause remanded: "the court erred in refusing to exclude the parol evidence"

Bogard v. Jones, 9 Humphreys 739, April 1849. "action of replevin . . plaintiff purchased [Julia and her child] . . 1846, . . in . . Mississippi, for . . five hundred and seventy-five dollars, . . 1847, they were found in the possession of the defendant in . . Tennessee. . . Julia was the child of . . Sally, . . devised to Fanny Morris for life, with remainder to her children, . . in . . North Carolina, . . defendant claimed . . Julia and her child . . [740] by virtue of a bill of sale executed . . 1845, by . . Freeman . . a son-in-law of Fanny Morris, who was dead before . . [741] the jury returned a verdict for the defendant, and assessed the value of the negroes at eight hundred and thirty-six dollars,"

Judgment thereon, affirmed: [742] "the owner . . has the right to take peaceable possession"

West v. Lanier, 9 Humphreys 762, April 1849. In 1845 "Lanier placed slaves on the land . . they cut timber, and dug and removed iron ore"

Wheaton v. Weld, 9 Humphreys 773, April 1849. [776] "he had sent the boy . . to his brother . . to serve him [[778] 'in nursing his children,'] in place of the one drowned."

Peak v. State, 10 Humphreys 99, December 1849. [100] "His negro woman lives with and cooks for this woman; . . his negro, riding his horse, goes for the midwife, . . and his negroes were employed fixing the chimney"

Cash v. State, 10 Humphreys 111, December 1849. Held: [113] "although the negro might be runaway when he was taken, still, if the owner pursued him and continued to enquire after him, he might be the subject of larceny."

Morrow v. State,[1] 10 Humphreys 120, December 1849. "The indictment . . charges that the defendant 'unlawfully did permit . . Jim, . . to trade in spirituous liquors, horses, cows, hogs, provisions, and other property, as if a free person of color, . . [121] to hire his own time" He was tried and convicted.

Judgment thereon, reversed and arrested: [122] "The word unlawfully . . does not describe the offence declared by the statute."[2]

Bank v. Barnes, 10 Humphreys 244, December 1849. "levied upon . . negro boy, . . about ten years of age, agreed to be worth four hundred dollars . . 1849."

Lunsford v. Baynham, 10 Humphreys 267, December 1849. [268] "on the first of January, 1847, the slave [owned by plaintiff, Baynham,] . . was hired to [Lunsford and Davie] . . 'to work on the farm,' for one year. Some six or seven days prior to the 25th of February . . taken

[1] See James *v.* State, p. 538, *supra.*
[2] Act of 1839, ch. 47.

ill . . bronchitis accompanied with fever; . . Shortly before . . seen driving a wagon . . the day was extremely wet and cold, and he was clad in some old clothes, so far worn that his arms and legs, up to his knees, were wholly uncovered; he had neither overcoat, blanket, or other covering . . a week after the illness . . a physician, who chanced to be passing, was requested by an agent of the plaintiffs in error, to call and see the slave; . . found him lying on the floor on a blanket. . . not called again until the first of March, . . [269] found the slave much worse, and informed Mr. Davie that if he were not particularly attended to, he would die. But there was no one, at any time, to wait upon him, capable of nursing or attending to him; . . thinks that with proper attention the slave would have recovered." He died on March 21. Verdict and judgment for the plaintiff for $500.

Judgment affirmed: "the hirer of a slave should be taught . . that more is required of him than to exact from the slave the greatest amount of service, with the least degree of attention to his comfort, health, or even life." [McKinney, J.]

Lawrence v. Vick, 10 Humphreys 285, December 1849. A slave girl was sold for $475.

Lewis v. Daniel, 10 Humphreys 305, December 1849. [307] "at the January term, 1816, of the county court . . Peter Singleton filed his petition . . 'that after his death, and [that] . . of his wife, . . he wishes the following negroes (viz, the complainants) to be emancipated; . . ordered . . he . . having given bond' . . present . . but three of the justices" The act of 1801, ch. 27, requires that nine or a majority of the justices should be present. "nothing further was done, until . . 1839, when . . his will was proven . . [308] 'Whereas, I have heretofore petitioned . . and being still desirous . . to continue the proceedings . . I do will . . their freedom to my negro slaves, . . at the death of my wife, . . I will, that should there be any legal . . objection . . to the emancipation . . so that the same cannot be done . . by the proceedings heretofore had . . my . . executor shall . . emancipate . . provided . . that said slaves . . shall be permitted . . to remain in . . [309] Tennessee. In case my . . slaves cannot . . be emancipated . . and remain . . I . . bequeath each . . to . . executor.'"

Held: [312] "the testator, had the emancipation . . greatly at heart . . the primary provisions . . shall prevail . . [315] this is a case for the exercise of the jurisdiction of a court of chancery, under the act of 1829, ch. 29, subject to the restrictions of the act of 1831, ch. 102. . . [316] declare that the petitioners shall be emancipated, upon their giving bond . . to remove forthwith from the State, . . unless the county court shall permit them to remain . . according to the provisions of the act of 1842, ch. 191." [Turley, J.]

Laura Jane v. Hagen, 10 Humphreys 332, December 1849. Will of Isaac Sitler, proved 1837: [333] "that my negro slave Malinda, . . aged about 26 years, Elmira, and her child Laura Jane, . . about six years, be free;" He "directs his executor to reserve, out of the residue

of his estate . . sufficient money for the education of . . Laura Jane, to the amount of two hundred dollars per annum, . . until . . Laura Jane arrive at the age of sixteen . . and if the . . profits of the residue . . [334] be not sufficient . . raised out of . . property devised . . for the benefit of testator's daughter, . . The executor . . renounced, . . The administrator took no steps . . and shortly after the death of the testator, Elmira . . removed her to Cincinnati . . No part of the annuity . . has ever been paid, . . the residue of the estate of the testator has been exhausted in the payment of debts;"

Held: she was [335] "discharged from all obligation of service . . though the assent of the State [had not] . . been obtained. . . removal . . neither violated the constitution of the United States, nor was it prohibited by the laws or policy of this State. . . [336] having her domicil in a State where slavery does not exist, she is free; and . . may maintain this suit [for the annuity]. . . the complainant is entitled to the entire sum at this time. . . not . . interest . . residence . . unknown . . and no proper application . . made" [Green, J.]

Rowan v. Mercer, 10 Humphreys 359, December 1849. [360] "a decree of foreclosure was pronounced, and the negro girl . . sold [in 1836 for] . . four hundred and fifty-six dollars and ten cents; . . [364] a fair price; and after the sale, and before [1847] . . the value of the slave had become much greater by the birth of a child and the increase of the price of property."

James v. Jones, 10 Humphreys 384, December 1849. "James, a person of color, instituted an action of trespass *vi et armis* . . to assert his right to freedom. . . offered in evidence the record of a suit brought by [a relative on the maternal side] . . against Prichard, . . by which he obtained his freedom." Held: this evidence should have been admitted.

Moses v. State, 10 Humphreys 456, April 1850. Moses was convicted of the murder of a white man and sentenced to death. "the prisoner exhausted his peremptory challenges before the jury was made up. One of the jurors . . had formed an opinion, . . 'The court . . [457] pronounced him a competent juror,' and he was put to the prisoner." Judgment reversed.

Settle v. Settle, 10 Humphreys 474, April 1850. "The negro woman had thirteen children three of whom were sold" by the tenant for life, before he removed from Virginia to Tennessee.

Nelson v. State, 10 Humphreys 518, April 1850. [519] "1845, the prisoner and . . other negroes were at a corn-husking, at the house of . . Nesbit, having been invited . . a quarrel arose between some of the negroes, . . The deceased [Sellars] (who was the son-in-law of Nesbit, and had been requested by Nesbit to superintend the putting away of the husks,) . . struck one of the negroes. Nelson thereupon spoke in an abrupt manner to Sellars, who then struck Nelson two or three blows with the [hickory] stick or club. . . [520] as large as a chair-post. . . negroes . . went off . . called back to get their supper, by . . son of [Nesbit] . . Sellars . . spoke to Nelson, . . 'You have come back again,

have you?' . . Nelson replied, 'Yes, and if you will give me a white man's chance, I will whip you like damnation.' The deceased then struck Nelson several times . . knocking him down or to his knees; . . Nelson . . stabbed him with a long knife . . Nelson is a basket-maker, and had the knife . . to work in white oak, . . usually carried it . . had one or two bad cuts on his head, made by the blows . . [522] the jury returned the following verdict: 'We find Nelson . . guilty of murder in the second degree, and submit him to the mercy of the court.' The defendant moved for a new trial, . . five of the jurors . . state, 'that they agreed . . only that they believed . . that the court had the power to commute the punishment from hanging to any less punishment. . . [523] it was in this view . . only, that they would ever have been induced to join in the verdict' . . The court overruled the motion for a new trial, and pronounced sentence of death"

Judgment reversed, and the prisoner remanded for a new trial: I. [525] "We fully concur with . . view . . taken by the supreme court of North Carolina[1] [[524] 'that an assault and battery [wantonly committed] upon a slave by a stranger is indictable']. . . [II.] [530] "If the slave . . by his insolence has provoked merited chastisement, and punishment be reasonably inflicted, it is his duty to submit; and if he . . slay . . it will be murder. But if the punishment be . . excessive, the killing will be only manslaughter. . . [533] We do not think, that a verdict ought to stand, when . . [534] life . . is involved, which has been rendered under the influence of such manifest misconceptions of the legal effect of it;" [Green, J.]

Stubbs v. Stubbs, 11 Humphreys 43, September 1850. Will: [44] "the land and negro man, to be divided equally amongst his children."

Farnsworth v. Lemons, 11 Humphreys 140, September 1850. [141] "some thirty years past, the slave . . gave birth to Eliza and died, leaving Eliza a helpless infant, that by request . . she, . . defendant, agreed . . to raise and protect it—they . . agreeing that . . she should have the child as her absolute property. . . that she . . did . . raise it at much trouble, care and expense. The children of Eliza have also been so far an expense, the oldest being only some ten years of age."

Ann v. State, 11 Humphreys 159, December 1850. Ann "was indicted . . for the murder of . . the infant child ['only five weeks old'] of . . master and mistress. . . [160] A day or two preceding the death . . the prisoner [not over fifteen] was taken from the negro-quarter . . to serve in the capacity of nurse. . . [The mother] went into another room . . leaving the child asleep . . absent about fifteen minutes . . during which time the laudanum was administered. . . The prisoner for some time denied . . Her master was much excited; inflicted blows with his hand . . threatened to shoot her, but was induced to desist by the persuasion of his wife, and sent her off to the quarter, where she was put in chains around her body and neck." The next evening "the overseer . . went . . after night to the house where the prisoner was confined.

[1] State *v.* Hale, p. 45, *supra*. See also Tennessee act of 1813, ch. 56. Ed.

. . told her to speak. . . said Tom had been at her to meet him out at night, and told her if she would give it laudanum it would sleep until she could get back; that she had asked . . [161] if it would hurt; he said no, he had given it many times to his wife . . and it never hurt her. She was told, she had better come out and tell the truth—it would be better for her. . . She said she . . had poured some in her hand and given it. . . Tom denied all this. . . improper intimacy . . for some weeks previous . . [The overseer] detected them, but . . 'he passed on and said nothing, as it was no business of his, and he did not care what they did.'" Verdict of guilty.

Judgment thereon, reversed: [161] "Judging from . . avowal of the overseer, the morals of the slaves . . [162] were in bad keeping; . . not much to be wondered at, that the prisoner . . had a more imperfect sense of the obligations of morality . . than is even usual among . . her own caste" I. Her confession should have been excluded; II. [166] "her relation as a slave, taken in connection with her disregard of . . positive direction [not to administer anything], and the gross heedlessness . . of the act, might constitute her offence manslaughter, but certainly nothing more. . . then the Circuit Court had no jurisdiction"[1] [McKinney, J.]

Kit v. State, 11 Humphreys 167, December 1850. "The Grand Jurors . . present, that Kit, a slave, . . did make an assault, . . and [banknotes] . . [168] silver coin . . two shirts . . one cap . . and one pocket handkerchief . . did . . steal and carry away" He was found guilty and the judgment was arrested.

Judgment in arrest, affirmed: "the indictment . . does not aver that the goods were taken from the person of the prosecutor and against his will."

Worley v. State, 11 Humphreys 172, December 1850. [173] "that Worley, a man somewhat advanced in life [[175] 'remarkable for his . . humanity towards his slaves'], . . with . . a wife, one son and two single daughters, was the owner of Josiah, . . about . . twenty one; . . turbulent, insolent, and ungovernable; . . [174] much absent from home at night, was lewd, that he kept other slaves in alarm from his threats, and frequently ranaway . . in May he ranaway; that on Saturday in that month the female part of Worley's family left home; that on Sunday, Josiah was tied . . and castrated by Worley and his son, . . that Worley sent immediately for his family physician, . . that the slave recovered completely in a very short time." Worley "was convicted . . on a charge of mayhem" "The jury . . fixed his period of confinement at two years."

Judgment thereon, affirmed: [175] "We utterly repudiate the idea of any such power . . of the master over the slave, as would authorise him thus to maim his slave for the purpose of his moral reform. . . the malice sufficiently appears . . at least by legal implication. . . [176] a

[1] Act of 1815, ch. 138. 2 Scott's Rev. 246-247.

white person may be indicted and convicted under . . code [1] for murder, mayhem or manslaughter, committed upon the person of a slave." [Totten, J.]

Walker v. Brown, 11 Humphreys 179, December 1850. [180] "action of trespass . . for whipping the slave of the plaintiff. . . The defendant . . pleaded specially, that he was a patrol, . . went to the house of the plaintiff's slave, in search of other negroes . . slave refused to admit . . by barring the door . . talked impudently . . wherefore he did moderately chastise her, as he had a right to do. . . This plea . . ordered to be stricken out, . . verdict for forty dollars . . for the plaintiff.

Judgment thereon, affirmed: [182] "the act of 1806 [ch. 32, sect. 3] . . have [*sic*] impliedly negatived the idea of the right of the party insulted to beat the slave without the order of a justice. The master . . is entitled to his action for damages, although . . the government may choose by law to exempt the party from a criminal prosecution [when the correction is only moderate and reasonable]." [2] [Green, J.]

Young v. State, 11 Humphreys 200, December 1850. "that Stephen [a slave] made threats that he would beat Young [a free man of color] badly on sight; . . pursued him . . and that Young being informed . . procured a pistol, loaded it, and stationed himself on the street, and that a conflict took place . . in which Stephen was killed. The defendant was convicted of murder in the second degree." "sentenced to ten years imprisonment"

Judgment reversed, and the prisoner remanded for another trial, because the trial judge charged the jury [201] "too strongly against the prisoner."

Anne (a slave) v. State, 11 Humphreys 205, December 1850. Anne "was indicted and convicted of murder;"

Held: "the costs shall be paid out of the State Treasury." [3]

State v. Wills, 11 Humphreys 222, December 1850. "1848, . . a presentment . . for selling spirituous liquors to a slave,"

Henry v. State, 11 Humphreys 224, December 1850. [225] "On Sunday, . . 1850, about 11 o'clock, at night, . . Eelbeck and . . Barham were slain in the street . . by a single stab in the breast of each, with a bowie or butcher's knife, . . inflicted by a powerful and skilful hand, well acquainted with the seat of the vital organs; . . the person who committed it, had stolen four hams . . [226] encountered by the two deceased. . . a number of negroes were passing . . from Hannah Henderson's where they had been at a prayer meeting. Oney, slave . . thought the black man was Henry . . he wore his beard and whiskers long at this time, . . had on a dark frock coat and a black cap; . . heard some negro say, 'Look there, they are about to take that negro:' . . saw the

[1] Act of 1829, ch. 23, sect. 55.
[2] Act of 1813, ch. 56, and Nelson *v.* State, p. 543, *supra*.
[3] Acts of 1827, ch. 36, sect. 1, and of 1835, ch. 19, sect. 9.

three men scuffle, and thinking they were about to whip the negro, she pushed on home." Other slaves corroborated. [228] "On Sunday, about one o'clock, . . Tom . . met Henry, . . and enquired where he was going; he replied, to the Campbellite Church, to prepare for the sacrament; . . in his left bosom a butcher's knife. . . Henry was then hired to work at the tanyard, . . Before . . had been . . a butcher. . . Mourning, a slave, . . about sun down . . noticed that he had a stick . . [229] knots cut off, split, . . found in the hand of Barham as he lay dead . . neither [Barham nor Eelbeck] . . had any stick [when seen shortly before the murder.] . . Henry . . is a man of great physical force . . [230] found [apparently] asleep, in a few minutes after [being informed of the murder] . . His conduct next morning was suspicious. . . [231] The prisoner was defended in the court below, by the same able counsel, that defended him here, and he was convicted under a most favorable charge of the court. . . Judgment affirmed." [McKinney, J.]

Moses (a slave) [1] *v. State*, 11 Humphreys 232, December 1850. [239] "The deceased . . was his master. . . kind, and humane . . though . . of firm, and decided character. The defendant is a boy just arriving at manhood, and had been raised by the deceased. . . been whipped by his master but once before the day of the murder. About a year before, . . had disobeyed the deceased, who being about to correct him, he ran off . . and remained out several weeks. When he went home, he was nearly starved, and greatly emaciated. After he . . had recovered his health, the deceased whipped him, somewhat severely, but not cruelly. A short time before the murder, the prisoner had . . remained out some weeks. . . [240] told . . [Mr. Brown's] Ira, that he was going home, and if his master got him in a close place, and he could not get out, he would knock him down and kill him, before he would be beaten as he had been. . . said when he ran away before, the deceased took his shirt off and whipped him a good deal; . . went home, and for several days the deceased forebore to chastise him. . . On the morning of the murder, . . The defendant was engaged in hauling rock [to build a fence]. . . While . . engaged in yoking the ox, the deceased . . ordered two slaves to hold him. . . locked a log chain around the defendant's leg, and sent him to the quarry to work, striking him several blows with the ox switch as he went off. The deceased . . got a rope; . . tied a piece of leather seven inches long, and three inches wide to a handle, and left them at the stable. . . went to the quarry, and commanded the defendant to follow him, which he did, taking a mattock, and large knife along. . . struck the deceased on the head with the mattock, . . five wounds . . each of which would have been fatal; and then . . four stabs in the breast with the knife. . . went back to where the other slaves were at work and told them . . [241] When asked why . . he replied, he was obliged to do it." He was indicted in the circuit court of Sumner county. [237] "The trial commenced one Tuesday, and a jury was not made up until Friday; . . two hundred and twelve men had been summoned."

[1] Not the Moses of Moses *v.* State, p. 543, *supra*.

[233] " after nine jurors had been selected, the prisoner filed an affidavit, alleging . . that great excitement existed against him . . [234] prayed the court to change the venue . . refused "

Judgment affirmed: [239] " The matter [of change of venue] is left to the discretion of the circuit judge, . . extremely difficult, in any case, to . . say he has erred; . . [241] clearly murder." [Green, J.]

Bedford v. Flowers, 11 Humphreys 242, December 1850. " on the 4th day of January 1847, [Bedford and McCall] . . hired from [Flowers] . . [243] two slaves, Jesse and John, by a contract in writing, which stipulates . . that the service . . was, ' to cut cord-wood on the Mississippi river, at or near Mills' Point, and for no other purpose.' . . April 1847, during a flood . . Jesse together with several others . . was put to assist in the removal of cord-wood, in a boat and on rafts, from an island . . to the bank, to prevent its being carried off by the flood. . . Jesse was drowned, in the effort to rescue another slave who could not swim." [242] " action . . to recover damages for the conversion . . The jury found for the plaintiff below, and assessed his damages, . . to six hundred and ninety three dollars." Judgment thereon, affirmed.

Kemp v. State, 11 Humphreys 320, December 1850. " that on the night of . . July, 1850, . . Pentecost learned that the prisoner had arranged to steal Alfred, and he sent him to his master to tell him . . and told Alfred to carry out the agreement between himself and the prisoner, and to take his master's horse from the stable and go to the prisoner on the Penitentiary road. The prosecutor [Alfred's owner] at first ordered Alfred to go to the back yard, but upon Pentecost expostulating . . and offering to manage the affair, . . consented, and himself and . . Nichol went out on the . . road, where . . the prisoner and Alfred were to meet. . . met . . and rode on together. . . as the prisoner and Alfred rode up, . . the master . . rode ahead of them in the road; . . Alfred fled back home, and the prisoner was secured. . . said he was not trying to steal the boy." He was found guilty of larceny and judgment entered. Reversed and the cause remanded.

Carter v. Rolland, 11 Humphreys 333, December 1850. [335] " Jim, alledged [*sic*] to be of bad and unmanageable habits and character, was sold . . and removed from the State."

Maultsby v. Carty, 11 Humphreys 361, December 1850. [362] " Maultsby died in North Carolina, about . . 1800, having made his will, whereby he directed, that a negro woman should be purchased with . . three hundred dollars, . . About . . 1818 the family removed to Tennessee, . . The negro was brought "

Morris v. Richardson, 11 Humphreys 389, December 1850. [391] " The slaves were sold [for the purpose of a division] privately, except Maria and child, . . all to relations . . of the guardian. . . [395] from the description of the slaves, . . the hire . . would be reasonably worth double the interest of the money for which they would be sold . . the judge . . clearly erred in not " refusing to order a sale.

Hall v. McLain, 11 Humphreys 425, December 1850. [426] "Robinson came into the possession of the estate on his marriage [with the widow], and sold some of the negroes, and with the proceeds bought others,"

Doss v. Birks, 11 Humphreys 431, December 1850. Birks brought "an action for slanderous words . . alleges that . . Doss said . . while speaking of the trial of . . [Doss's] slave for insolence that the plaintiff swore a lie. . . [432] The jury found for the plaintiff three hundred and fifty dollars damages." No error.

Womack v. Smith, 11 Humphreys 478, December 1850. In June 1844 [479] "Emma and her two children, Maria and Charlton, of the value of six hundred dollars" were placed in Lindsey's possession in Virginia, "with the understanding that . . Lindsey's family [beneficiaries of the trust] should have the use . . No . . conveyance . . In November, 1845, the plaintiff [trustee] caused said slaves to be taken out of the possession . . being apprehensive that he was about to remove them; but . . on receiving strong assurance to the contrary, restored [them.] . . Lindsey . . immediately afterwards, and in the night, ran off with the slaves, . . to . . Tennessee, except . . Maria, who . . he sold on the way. . . [Lindsey] died 1846, . . his wife administered . . procured an order of court to sell . . Emma, and her infant child, Archer, . . sold at public auction . . [480] 1847, for $415" to Smith. Later Charlton was sold to Tinsley for $210.

Weatherhead v. Baskerville, 11 Howard 329, December 1850. Will, 1788: "my wife to keep possession of the four oldest negroes for the maintenance of the family;"

Rowe v. State, 11 Humphreys 491, April 1851. "indicted for the murder of a negro man, Frank, . . found guilty, and sentenced to ten years imprisonment . . [492] judgment pronounced upon the verdict;" Affirmed.

State v. McCarn, 11 Humphreys 494, April 1851. [496] "McCarn ['laborer'] was indicted . . as accessory before the fact, to a felony committed by David [his slave], . . assault upon . . Elizabeth McCarn, a free white woman, by shooting at her with a gun, with the intent, her . . to . . murder in the first degree. . . [497] averred . . that . . the prisoner did . . command his . . slave, to commit the offence." Judgment that the indictment against McCarn be quashed.

Judgment reversed, and the prisoner remanded: [497] "David . . is liable, in his own person, as a principal offender. . . as the slave may lawfully resist his [master's] command to perpetrate a crime, . . [498] accessories before the fact, 'shall be punished, as their principals are punished.'[1] Now, for an assault upon any free white person, with intent to commit murder in the first degree, if done by a slave, the punishment is death;[2] if done by a free white person, it is confinement in the peni-

[1] Criminal Code, 1829, ch. 23, sect. 63.
[2] Act of 1835, ch. 19, sect. 10.

tentiary, . . [499] not less than three, nor more than twenty-one years.[1] . . The distinction being made in the punishment of the principal offenders, we think it a . . reasonable construction . . to observe the same distinction, in the punishment of accessories." [Totten, J.]

Wesley v. State, 11 Humphreys 502, April 1851. "indicted . . for the murder of . . his master, . . eight jurors were empannelled and sworn. . . [503] with the consent of the defendant and Attorney General, were, by the court, permitted to disperse until the next morning. . . [Then] two others were elected, and they, with the eight . . were [likewise] permitted . . until Monday" He was found guilty and sentence of death was pronounced.

Judgment reversed, and the prisoner remanded for another trial: [505] "the consent of a prisoner, in such case, [ought not] to be taken. . . where the prisoner is a slave, and ignorant of his rights, and the case one calculated to excite the community against him, the rules of law to secure an impartial trial . . ought to be the more firmly enforced." [Green, J.]

Gillespie v. Edmonston, 11 Humphreys 553, April 1851. "a negro girl . . aged about sixteen or seventeen years, left with a Mr. Carter, to be delivered of a child; . . was, in quality, number one; . . to remain . . for ten days after the birth . . and after the expiration . . if said negro girl and child did well . . [554] plaintiff was to . . pay . . five hundred and fifty dollars, . . for . . girl and child. . . but the defendant . . removed the girl from Carter's . . before she was delivered"

Cheek v. Wheatley, 11 Humphreys 556, April 1851. "the slave was sold . . to defendant, who . . disposed of [it] . . in . . Mississippi."

Hinson v. Partee, 11 Humphreys 587, April 1851. "1841, . . $700, . . for a negro woman . . and her child Richmond; . . [589] Mrs. Webb [their former mistress] proves, that when the child was burned, Partee's negro, on Partee's horse came for her to go and see it."

Sam v. State, 1 Swan 61, September 1851. "a slave, . . convicted, in the circuit court of Anderson county, of an assault upon . . a free white person, with an intent to commit murder in the first degree. . . [62] on the trial . . seriously controverted . . whether the offence . . had been committed in the county of Anderson, . . or . . Roane. . . after the jury had retired, . . 'stated by one of the jurors . . [63] that he . . had seen the marked line, . . and that Hankins' house [where 'the offence is said to have been committed,'] would be in Anderson,'" Judgment of death, reversed and the case remanded.

Eaves v. Gillespie, 1 Swan 128, September 1851. [129] "1807, in . . South Carolina, Mary Johns . . intermarried with . . Eaves, and that 'shortly' after this marriage, Jesse Johns, the father . . [130] 'took [Isabella] . . by the hand and gave her to Mary Eaves and her increase.' . . that . . Eaves was present, and that Jesse Johns said he had no negroes to give to him, and that . . Eaves was dissatisfied" [129] "About

[1] Act of 1829, ch. 23, sect. 52.

1822, . . Eaves removed . . to . . Tennessee, where . . 1834, . . he sold . . at . . twelve hundred dollars, . . Isabella and her [four] children," Held: [132] " the claim to the separate use cannot prevail."

State v. Dan Cherry, 1 Swan 160, December 1851. " The first count . . charges, that . . Dan, a negro, made an assault upon . . a white female, with an intent to have carnal knowledge . . The second . . charges, that . . Dan . . did ravish . . The third . . that . . Dan . . did make an assault upon . . a white female child, under the age of ten years, and did . . carnally know and abuse her. . . verdict of guilty generally," Judgment arrested.

Affirmed: [164] " the offence charged in this third count, having been expressly excluded from the catalogue of capital crimes committed by slaves, by the act of 1819 [ch. 35, sect. 1], . . it is not at this time . . a capital offence . . a singular omission of the Legislature [1] . . the third count was improperly joined with the first and second " [Green, J.]

White v. Suttle, 1 Swan 169, December 1851. Suttle [171] " who worked about twenty hands," [170] " resided at another farm, but had his hands and overseer on the farm in question, . . defendant [White] . . claimed . . the land . . went with an overseer and some . . slaves and took possession . . forced the plaintiff's negroes out of their houses . . [171] Suttle's houses, for his overseer and hands, were taken down and removed to another part of the farm, leaving Suttle's slaves and their clothing without a shelter." [170] " White employed his hands in cutting rail timber, making rails, breaking down cotton stalks, and repairing the houses."

Wiley v. State, 1 Swan 256, December 1851. " Wiley, a free person of color, was convicted, . . September term, 1851, upon a charge, that he had . . persuaded a negro slave . . to leave his owner,[2] . . the jury were permitted, by consent of the State's Attorney and the prisoner, to disperse . . from one day to another." New trial granted: [257] " his refusal would have been construed, as a want of confidence "

Bailey v. Rawley, 1 Swan 295, December 1851. " On the 25th December, we . . promise to pay . . thirty-five dollars for the hire of a negro girl, . . for the year 1848. . . agree to furnish . . two suits of good summer clothes—one suit of good woolen winter clothes—a good blanket, worth two dollars and a half—a pair of good shoes and stockings, and pay her tax and doctor's bill for the year 1848."

Ellick v. State, 1 Swan 325, December 1851. [326] " Ellick, a slave was indicted in the circuit court of Giles, for an assault, with intent to commit a rape upon . . a free white woman,[3] and . . 1849 . . was tried and convicted . . appealed . . judgment . . reversed, and the prisoner was remanded . . At August term, 1850, . . the venue was changed to the county of Maury; . . May term, 1851, . . again convicted . . and sentence of death pronounced " Affirmed.

[1] " *Vid.* Act of 1852, chap. 174, sec. 2, passed after this opinion was delivered.—REP."
[2] Act of 1835, ch. 58.
[3] *Ibid.*, ch. 19, sect. 10.

Caruthers v. Moore, Thomp. Cas. 86, December 1851. [87] "the defendant . . before administration had been granted in Mississippi, took possession of several slaves belonging to said estate, and brought them to Tennessee,"

State v. Payne, 1 Swan 383, April 1852. [384] "The indictment . . charges . . that . . Payne, knowing that . . McCarn had . . incited . . [his slave] David to commit the . . assault ['upon . . a . . white woman, with intent to kill'], did . . conceal, aid and comfort . . McCarn."

Lally v. Holland, 1 Swan 396, April 1852. [398] "the slave . . had been brought [from Mississippi] to Memphis, . . was sold, . . 1849, at . . $885,"

Flowers v. Wilkes, 1 Swan 408, April 1852. In 1842 a female slave was sold for $400.

Bennett v. State, 1 Swan 411, April 1852. "convicted, in the common law court of . . Memphis, of *petit larceny*, and sentenced to one year's imprisonment . . proved, on the trial, that he is '*a negro of black complexion*;' but the indictment is . . silent as to his *color* or *condition*,"

Judgment reversed: [412] "utter want of jurisdiction." "his *color* is . . *prima facie* proof of slavery."

Barham v. Turbeville, 1 Swan 437, April 1852. "In 1843, he, with . . slaves, removed from Louisiana to Tennessee,"

Loftus v. Penn, 1 Swan 445, April 1852. Ante-nuptial contract, 1845, that the husband shall have no right to the wife's slaves.

Adams v. State, 1 Swan 466, April 1852. "convicted . . under the act of 1835, chap. 65, . . of harboring a runaway slave. . . judgment . . [467] reversed, and the prisoner remanded . . [in 1851] a jury could not be had, the venue was changed, . . 1852, . . again convicted" Judgment of the circuit court, affirmed.

Craddock v. Cabiness, 1 Swan 474, April 1852. [476] "Cabiness . . talked of taking the servant of complainant, whom she had brought there to wait upon her, from her bedside, to labor in the field; whereupon she returned"

Cawthon v. Coppedge, 1 Swan 487, April 1852. "to aid my . . grand children's support, in their raising and education; I . . convey to them [in 1848]—reserving the use . . to my . . daughter . . during her . . life—my negro boy . . aged about twelve years, and my negro girl . . aged about sixteen years."

Woods v. Sullivan, 1 Swan 507, April 1852. Will: [508] "at his wife's death, it shall all be sold, except the land and negroes."

Simpson v. Peck, 2 Swan 54, September 1852. In 1850 a negro man was hired for "twelve months, at eight dollars per month. . . 'If . . Simpson sees proper at . . any time during the year, to give . . Peck two hundred dollars, . . Peck, binds himself to make . . bill of sale . . and . . not to receive any thing for the hire'"

Bedford v. State, 2 Swan 72, September 1852. [73] "convicted . . of the offence of selling spirituous liquor to a slave, under the act of 1843, ch. 141."

Richardson v. Cole, 2 Swan 100, September 1852. In 1844 the sheriff sold a negro woman for $427.

Vanleer v. Crawford, 2 Swan 117, December 1852. [122] "On or before the 25th of December next, we . . promise to pay . . six hundred and ninety dollars, for the hire of [six negroes] . . from now [January 29, 1849] until that time; and . . to let said boys come home twice during the year, and furnish them the usual clothing customary at iron works."

Lawrence v. Lawrence, 2 Swan 141, December 1852. [142] "found by the jury that [in 1847] the life estate of Mary Lawrence [now 87 years of age] was worth four hundred dollars, the [man] slave being worth about eight hundred dollars."

Doran v. Brazelton, 2 Swan 149, December 1852. [152] "This bill is filed by eleven persons of color in their own names to establish their right to freedom . . They charge, that they were the slaves of . . [153] James Doran of . . Alabama, who made his will in 1840, . . providing for the emancipation of petitioners at the death of his widow. . . defendants moved to dismiss the suit upon the ground that slaves can only sue by next friend, . . sustained"

Decree dismissing the bill, affirmed: [155] "A slave can have no *status* in court except by a next friend." "no difficulty is ever found where the claim is calculated to inspire the least confidence in its justice, in procuring the agency of responsible citizens to stand forth as next friend," [Caruthers, J.]

Kimbro v. Hamilton, 2 Swan 190, December 1852. In 1847 a negro girl was sold for $325.

Layne v. Pardee, 2 Swan 232, December 1852. In 1837 [236] "he brought the slaves of his wife here" from Texas.

Nelson v. State, 2 Swan 237, December 1852. [238] "two years ago, Nelson [slave of Hyde] and Sam [slave of Spann], with other negroes, were . . at a corn shucking . . witness [Blankenship] . . found Nelson swearing with his knife in his hand, behind him. Hudson took the knife out of Nelson's hand, and witness kicked him several times and drove him away. . . Nelson said he wanted his knife; said it was his bailing knife. Witness kept the knife, and afterwards gave it to another of Hyde's negroes, . . [239] Jim, slave, . . left about the same time with Nelson, . . Nelson said that Sam had caused Blankenship [*sic*] to take his knife from him, . . and that he would have his revenge . . [242] Harkless, slave, said, . . I have a wife at Dick Blan Vaughan's. [Seven negroes] . . were at the house of Dick Blan Vaughan, Sunday. . . [243] Sam and Nelson were friendly when I left them" "the next day . . about forty or fifty yards [from the place where I left them] . . we found the body of Sam . . [248] a cut . . four inches long . . Sam

had no knife . . [249] the Sunday that Sam was killed . . Nelson . . had blood on his shirt bosom; more on . . pantaloons. . . [250] Frank, slave, . . Heard Sam say that if ever he caught Nelson off from home he intended to beat him nearly to death with a stick. . . that Nelson had hurt him; . . [256] verdict of guilty of murder in the first degree, . . judgment accordingly"

Reversed, and prisoner remanded for a new trial: [262] "the charge of the law ought to have been more full"

State v. Gossage, 2 Swan 263, December 1852. Held: an indictment may be preferred without a prosecutor against a person who sells spirituous liquors to a slave in violation of the statutes, [264] "the most odious and mischievous of all the minor misdemeanors," [Caruthers, J.]

Burke v. Clarke, 2 Swan 310, December 1852. "The defence . . was, that the slave was of unsound mind at the time of the sale."

Wyatt (a slave) v. State, 2 Swan 394, December 1852. [395] "The first count charges an intent to commit larceny; the second, to commit a rape upon . . a free white woman; . . It was proved that the prisoner forced the door of the dwelling house of the prosecutor, in which he and his wife were sleeping, about 11 or 12 o'clock, at night; that he approached the bed . . and put his hand upon her, which aroused her . . and she gave the alarm, when the prisoner fled; the prosecutor pursuing him with his dogs and gun, until he overtook, shot, and disabled him." [394] "convicted . . and sentence of death pronounced" [395] "The error . . relied upon for a new trial, is . . part of the judge's charge . . 'If the jury believe that the defendant attempted, either by force, or by fraudulently inducing [her] . . to believe that it was her husband, . . that then they ought to find him guilty.'"

Judgment reversed, and the defendant remanded for a new trial: [398] "*Fraud* . . [399] cannot be substituted for *force*, as an element of this offence, according to the existing law."[1] [Caruthers, J.]

Jones v. State, 2 Swan 399, December 1852. Indictment under the act of 1835, ch. 58, sect. 1. The jury found a special verdict: [402] "that Jesse, . . a slave, the property of the Duck river Slack Water Navigation Company . . formed the determination to run away, . . without his being . . enticed thereto by the defendant. . . communicated this determination to the defendant . . [who] undertook to aid . . in procuring free papers, and applied to a white man[2] for the purpose; when the plot was detected." "The court adjudged that the defendant was guilty,"

Judgment reversed, and the prisoner [404] "discharged from *this* prosecution," [403] "the *intent* . . to convey said slave out of this State; or to deprive the true owner . . is the chief ingredient of the offense, . . no finding of such an intent" [McKinney, J.]

Swanson v. Swanson, 2 Swan 446, December 1852. Will of William B. Theobald, who died in 1844: [459] "I bequeath . . except Madison,

[1] Act of 1829, ch. 23, sect. 13.
[2] This would imply that Jones was colored. Ed.

(a slave,) which is to be set free at my wife's death, . . provided he make her a faithful and obedient servant; if not, she is to dispose of him as she thinks proper."

Morgan v. Winston, 2 Swan 472, December 1852. Deposition: [473] "a short time before her death her flesh wasted away very rapidly, . . she had such symptoms as I believe persons generally have, who die of secondary syphilis, which I suppose to be her disease."

Foster v. Jordan, 2 Swan 476, December 1852. [477] "On their removal from Virginia [in 1824], they brought . . the said slaves,"

Carnahan v. Wood, 2 Swan 500, December 1852. In 1845 [502] "he left the slave, Milly, . . to wait on . . his mother, who was enfeebled by disease,"

Alfred and Anthony v. State, 2 Swan 581, April 1853. "indicted and convicted of the murder of their master, . . sentence of death" Errors relied upon for a reversal: I. Incompetency of jurymen. [584] "N. Pate stated that he had heard that Peck's negroes had killed him, that he believed it, and does now, . . upon rumor . . has a bias upon his mind, . . [II.] [588] the confessions made previous to the investigation before the committing court, were attended by such circumstances, as to render them incompetent. . . permitted to go to the jury. . . The court expressly stated to the jury that the evidence was illegal and must not be regarded . . But the confessions . . taken down by the committing magistrate . . [590] were freely and voluntarily made, . . properly admitted . . amply sufficient to establish the guilt" No error in the proceedings. Judgment affirmed.

Jones v. Jones, 2 Swan 605, April 1853. [606] "a contract . . to oversee . . plantation and his servants, . . and affairs connected therewith, for the year 1851. . . wages . . were to be two hundred and seventy-five dollars. . . May . . he was discharged . . evidence tending to show . . guilty of abuse and cruelty towards the servants, . . A witness testified . . he was proverbial for his cruelty and inhumanity to negroes, and was of opinion that defendant knew his character in this respect before the employment. Another witness stated that plaintiff was uncontrollable, was very cruel to slaves, . . [607] After the plaintiff was discharged, he was employed by Mr. Nevil . . as an overseer . . for the balance of the year," Held: [608] "sufficient cause for his discharge, if he be guilty of cruelty to the slaves," [Totten, J.]

State v. Bradshaw, 2 Swan 627, April 1853. Held: to convict one charged with giving spirituous liquors to a slave, in violation of the act of 1852, ch. 174, sect. 10, it must [628] "be averred and proved that the defendant was, at the time, . . grocer or retailer;"

Sidney (a man of color) v. White, 1 Sneed 91, September 1853. Suit for freedom instituted in 1849. [92] "Prior to . . this suit he had been arrested by the defendants as a fugitive slave from . . Alabama, and taken before the Judge of the Federal court for the Eastern district of Tennessee, who, upon investigating their claim, ordered him to be

delivered up[1] . . to the defendants, who claimed him as agents for the owner in Alabama. This fact was specially plead by the defendants in bar of the action; . . plaintiff replied that the proceeding before the Federal Judge was *ex parte* and in fraud of his rights. . . defendants demurred, . . sustained" . .

Affirmed: [93] "it is clear, upon the facts in this record, that he was *freeborn*, according to the uniform course of decision in this State. But . . The act of 1793 . . declares that the certificate of the judge . . 'shall be sufficient warrant for removing the fugitive . . to the State . . from which he . . fled.' . . it follows . . that the tribunals of the State in which the fugitive may be found, have no jurisdiction to entertain a suit for the purpose of trying his right to freedom, after the delivery of the fugitive to the claimant under the act of Congress." [McKinney, J.]

Isham v. State, 1 Sneed 111, September 1853. "The plaintiff in error, a negro slave, was indicted . . for an assault and battery upon a free white female with intent to commit a rape. . . 1843, . . tried, . . convicted and sentenced to death. His motions for a new trial and in arrest of judgment were . . overruled" [113] "assigned for error here . . [114] The objections . . are all purely technical, . . The proof is not even given on which the conviction was founded."

Judgment affirmed: [115] "it must be inferred, that [the proof] . . was entirely conclusive of his guilt. The day has now passed for rescuing the guilty upon mere technicalities." [Caruthers, J.]

McGavock v. Wood, 1 Sneed 181, December 1853. "The plaintiffs [Wood and brother] purchased the slave [in 1852] for the southern market for $700, and sold her in Alabama for $950. Soon afterwards . . returned to them as unsound, and they refunded the purchase money and brought the slave back . . and commenced this action against McGavock upon the warranty [of soundness], claiming also compensation in damages for their necessary nursing and medical attention . . and the expenses of her journey to and from Alabama." The charge of the judge below allowed doctor's bills and expenses of travelling to be included in the damages. [182] "verdict and judgment for the plaintiffs for $250,"

Reversed, and cause remanded: [184] "If [the purchaser] . . prefers to hold on to the slave and leave the contract open, he must be at all expenses himself;" [Caruthers, J.]

Bridgewater (*executor of Pride*) *v. Legatees of Pride*, 1 Sneed 195, December 1853. The will of Francis Pride, who died in 1850, [199] "provides that all his slaves be hired out until a fund is produced sufficient to pay all debts and expenses to be incurred in setting them free and removing them to Illinois, if they should be taken there, with one year's support. . . 'I will . . all the . . slaves their freedom, if they can be emancipated according to the laws of Tennessee and remain in Tennessee as free persons of color, or when emancipated here if they can be removed to . . Illinois and . . be protected as free persons of color by the constitution and laws of that State. . . I direct if my said slaves

[1] Under the act of Congress of 1793.

cannot be emancipated and remain in Tennessee, or be removed to Illinois, and remain there as free persons, that they be sold, except' . . [200] eleven . . to be . . taken care of by the executor, or such person for him as will treat them kindly, . . but to have their freedom at as early a time as practicable. . . those . . to be sold on the condition aforesaid, being twenty-eight or thirty in number,"

Held: the latter slaves must be sold: "after manumission . . they cannot be allowed to remain in this State.[1] By an act of the Legislature of Illinois,[2] . . they are prohibited under heavy penalties, from emigrating to or settling in that State. . . Those reserved from sale will be kept by the executor, as directed, until they can be set free by a compliance with the law," [Caruthers, J.]

Watkins v. Barnes, 1 Sneed 201, December 1853. [202] "The value of ['one negro man . . about 30 years old, and Keziah, aged about 24 years] . . levied upon [August 1851] is stated . . at $1,150."

Brakefield v. State, 1 Sneed 215, December 1853. [216] "The prisoner resided with Mr. Adams [his father-in-law], and made a crop, aided by two slaves, the property of Mr. Adams. In September, 1852, the prisoner tied one of the slaves to a tree . . and whipped him; . . went to get more switches, and . . Mr. Adams came to the slave and released him. The prisoner returned—a quarrel ensued . . and Mr. Adams . . received the wounds of which he died about three hours thereafter. . . [217] was assisted to the house, . . called the negro slave; asked him if he was badly injured, and said to the slave, in presence of witness, Willis has given me my deathly wound; I expect I will die, and you will have to be hired out. I want you to be good to my daughter."

Savage v. Hale, 1 Sneed 365, December 1853. [366] "The widow came to this State [from Virginia in 1843] with the children and slaves."

Cooper v. Summers, 1 Sneed 453, December 1853. A woman, whom a jury found to be a lunatic, was the owner of four slaves.

Houston v. Embry, 1 Sneed 480, December 1853. [487] "He disposed of a slave, Charles [the separate property of his wife], seven or eight years old, . . to one Simmons [in 1843]; from whom the defendant acquired Charles by bill of sale" a few days later.

Franklin v. Ezell, 1 Sneed 497, December 1853. [498] "Franklin . . of Tennessee . . April, 1851, . . gave a written authority to Fitzpatrick 'to sell' . . [a female] slave,[3] . . the agent made the sale [in May] to Ezell [in Mississippi] at . . $700, . . warranting said slave 'to be sound and healthy.' . . the next day . . examined by the physicians, and . . found to be laboring under *umbilical hernia* in a most aggravated form, . . incurable, . . [rendering] the slave almost, if not altogether valueless. The evidence tends to establish that the agent, on his way . . [499]

[1] Act of Dec. 30, 1849, ch. 107: "hereafter no slave shall be emancipated in this State except upon the . . conditions imposed by the act of 1831, ch. 102."

[2] Act of Feb. 12, 1853.

[3] "not over 21 or 22 years old." Ezell *v.* Franklin, p. 559, *infra*.

became fully aware . . if not informed of it before; . . fairly to be presumed that the injury . . which perhaps had been of recent origin, was . . the sole cause for sending her off to be sold." Judgment for the defendant, in an action of debt brought by Franklin. Affirmed.

Boon v. Lancaster (*next friend*), 1 Sneed 577, April 1854. Will of James N. Watt, 1852: "I direct that all my slaves be set free, and be sent to a Free State at my expense as soon as possible."

Held: I. the primary object of the testator (to free his slaves) cannot be defeated by the fact that they cannot be sent [580] "to a Free State of this Union, . . because of their prohibitory laws, or a rule of general comity, forbidding that one community should cast its refuse population upon another." [1] II. [585] "They must be sent to the western coast of Africa;[2] . . [586] The fund necessary to send them to Liberia cannot be raised out of the estate [being much larger than the sum required for sending them to a free state], but must be created by hiring . . or derived from other sources under the direction of the chancery court." [Caruthers, J.] Totten, J., dissented.

Major v. State, 2 Sneed 11, December 1854. [12] "The prisoner, a slave, was indicted in . . Scott county, for an assault and battery upon a free white woman, with intent to commit a rape. After an unsuccessful attempt to empannel a jury . . the court changed the venue . . and [again] . . for a like reason . . a girl of sixteen . . had known the prisoner well from her earliest years—and had been much associated with him since her childhood. He had never . . attempted a rude approach toward her, or uttered a coarse . . [13] word in her presence. On the night of the assault . . she, with the children [of a neighbor], had retired to bed, . . knocking . . she opened [the door], and the person . . ran off . . Greatly alarmed . . she . . waked the children and . . proceeded with them toward her own home. . . after leaving the lot, . . a person, who, by moonlight, resembled the prisoner, and whom she believed to be him, suddenly sprang upon her, . . greatly disguised, with 'his head all bundled up with rags, and looking like a ghost,' . . She called him by name, and begged him to desist. He did not reply, but after . . about three minutes, . . without accomplishing his purpose, he . . ran off . . Early next morning . . [14] neighbors . . found . . large foot-prints, made . . with broad-toed shoes . . The prisoner had been seen, about sunset of the day . . the offence was committed, without shoes: . . seen a few months before, . . occasionally wearing . . broad-toed shoes. . . tried and convicted. . . judgment of death"

Reversed, and the cause remanded: [17] "The *identity* of the prisoner with the person who committed the assault, is a point on which . . more . . satisfactory proof may be adduced." [Totten, J.] See same *v.* same, p. 564, *infra*.

Turner v. Turner, 2 Sneed 27, December 1854. [29] "Received of Wm. Weatherhead, a negro boy about seven years old, . . which I will

[1] Counsel for the executor is credited with this expression. Ed.
[2] Acts of 1853-1854, ch. 50.

keep with me, to be subject to the order of Sumpter Turner at any time when called on. Priscilla Turner. . . 1834"

Cobb v. Johnson, 2 Sneed 73, December 1854. "The slave was hired during the year 1851, . . for service at their iron works. . . the defendants agreed to keep the slave out of 'dangerous places, by which life or limb might be endangered.'" [79] "put to work at an ore bank, and while digging ore, was killed by the falling in of the bank above him."

State v. Harris, 2 Sneed 224, December 1854. Held: an indictment for giving spirituous liquors to a slave, [225] "name unknown, and the name of the owner . . unknown, . . without the consent in writing of the owner, or person having the lawful control" is good.

Ezell v. Franklin, 2 Sneed 236, December 1854. Action of trespass to recover damages for a breach of warranty of the soundness of a slave. See Franklin *v.* Ezell, p. 557, *supra.*

Mosely v. Baker, 2 Sneed 362, December 1854. In 1850 Rose and her child were sold for $300.

Stratton v. Brigham, 2 Sneed 420, December 1854. [422] "In . . 1853, he . . came to Tennessee [from New York] . . rented a house . . purchased a servant for a cook,"

Cobb v. O'Neal, 2 Sneed 438, December 1854. In 1853 Cobb purchased Priscilla for $800. A few months later he sold her to O'Neal for $750. Just before the execution of the bill of sale, witness [440] "heard the slave . . cough, and asked her about it; she said she had been sick for some time, and had a severe hemorrage [*sic*] of the lungs. Witness told O'Neal and Cobb . . Cobb replied, that 'she was merely putting on, she did not want to go to the country; that she was sound, and he would warrant her to be so.' . . physicians . . examined the slave a few days after . . she was laboring under consumption, and . . of no value. . . [441] Cobb was a physician." [439] "The plaintiff [O'Neal] recovered $833 75 damages, for which judgment was rendered;" Affirmed.

Smith v. Smith, 2 Sneed 473, April 1855. "action for slanderous words . . 'I don't want anything to do with a man that sells liquor to my negroes on Sunday, and he does that thing.' 'You can tell him, I will not go to such a man's house, who sells my negroes liquor without my permission, and that I know *he* does.' . . [474] verdict for the plaintiff [for $235]." Held: [481] "the words were actionable *per se.*" "this offence . . involves the highest degree of moral turpitude." [Totten, J.]

Hughes v. Boyd, 2 Sneed 512, April 1855. Will: [513] "that any surplus . . as well as the proceeds of a tract of land . . [514] 'be laid out in young negroes for the benefit of my wife and children.'"

Carnes v. Apperson, 2 Sneed 562, April 1855. A negro woman was sold in 1852 for $700.

Pearson v. Johnson, 2 Sneed 580, April 1855. [581] "In . . 1853, the clerk of the circuit court . . in pursuance of a decretal order [for distribution among the children of an intestate] . . sold at public auction

. . a slave, George, at $1005," Before the confirmation of the sale, the purchaser petitioned the court to set it aside, as [580] " the slave was affected with a malady, which . . reduced his value one-half," [582] " He had a protracted sickness, . . 1851, . . health then revived, and . . he was able to perform ordinary labor on the farm in 1852. . . soon after [sale], relapsed " Sale was set aside by the court.

Affirmed: " the owners . . stand acquitted of any fraudulent practice in relation to the sale. . . [583] But the contract is *not executed*, . . [584] the court [will] refuse to . . enforce an inequitable contract, made under its own decree," [Totten, J.]

Bloomer v. State, 3 Sneed 66, September 1855. Bloomer was indicted for an assault. [67] " met [John] Minor in the road, . . asked Minor for a marriage license, which he suspected him to have. Minor denied . . Bloomer . . then told him if he did not give up the license he would cut his throat, having his open knife in his hand . . [68] Minor . . gave them [*sic*] up . . Defendant offered to prove that John Minor was the brother of Wilson Minor, who had abducted the niece of the defendant for the purpose of marrying her, and that said Minors were free persons of color within the degrees prohibited by the statute from intermarrying with white persons, and that the young lady . . was white and an infant of tender years. . . this proof was rejected . . The jury found the defendant guilty. . . judgment for a fine of one cent, and costs "

Affirmed: [69] " however laudable his purposes may have been, there is no pretence that these facts . . would amount in law, to a justification " [Harris, J.]

Fulkerson v. Bullard, 3 Sneed 260, September 1855. Bullard's will, 1852: [261] " that my negroes . . be hired out . . from time to time, . . to the best advantage, . . but to such persons as will treat them kindly and not abuse them, . . and at the expiration of five years [be divided] . . equally amongst all my children; "

Elliott v. Cochran, 2 Sneed 468, December 1855. " petition of the executors . . that it was manifestly to the interest of the legatees that the slaves be sold, two of them being old and infirm, and the other an infant of tender years, all unproductive of profit to the estate. . . the Chancellor . . vested the executors with discretionary power to sell, fixing the *minimum* price at $600. For this price the executors sold . . [469] The bill [filed by the legatees, minors,] charges, that the sale was unnecessary—the hire of two of the slaves being . . productive of profit . . also charged . . [they] were not made parties " Held: the sale was void, as against the complainants.

Bell v. Cummings, 3 Sneed 275, December 1855. [276] " The plaintiff hired his negro man [for the year 1852] . . to the defendant . . keeper of a livery stable . . [277] no stipulation . . as to . . the particular kind of service . . the defendant hired the negro to Mr. Parish, to drive his dray to and from the wharf [[283] 'amidst dangers and exposures'] . . received an injury in his breast, by a dray running over him. . . The plaintiff . . [then] requested the defendant, if he did

not want the boy at his stable, to hire him to the Corporation [of Nashville], to work on the streets. . . defendant refused . . but afterwards . . hired him to the Corporation, . . [283] put . . with a crowd of hands, upon the public streets, under a hard public driver, where the wages are higher in proportion to the expense and hazard." [277] "he sickened and died of typhoid fever. . . no proof of want of due care . . either in sickness or in health." Verdict and judgment for the plaintiff for $800.

Affirmed: [285] "the simple act of sub-hiring, without the assent of the owner . . is a tort, which . . renders the bailee immediately liable . . The efforts of the owner . . to procure good homes and kind treatment for his slaves, will under this simple rule, be far less liable to frustration. . . [287] We do not say . . that full force and effect were given to the acts of the plaintiff, going to show a waiver, . . but this action being in both case and trover, and the finding general, we think it is sustained by the facts and the law," [Caruthers, J.]

White v. Harmond, 3 Sneed 322, December 1855. "The plaintiff hired a slave to the defendant . . for the year 1853. Both parties were . . [323] resident citizens of Giles county. . . no expressed stipulation . . as to the place where the slave, who was a blacksmith, was to be employed." [324] "afterwards the defendant removed . . to . . Alabama, and without the consent of the plaintiff, carried the slave with him, where . . he sickened and died." Action to recover the value of the slave. Verdict and judgment for the defendant. Reversed: the hirer removed him [325] "at his peril."

James v. Drake, 3 Sneed 340, December 1855. See same *v.* same p. 567, *infra.*

Young v. Shumate, 3 Sneed 369, December 1855. A slave was sold, in 1853, under a decree of the county court, for $1105.

Rosson v. Hancock, 3 Sneed 434, April 1856. "The plaintiff declares that the defendant . . 'deceitfully represented the . . slave to be sound except one hip, and a good house servant; whereas . . [435] one of her arms had been broken, or out of place, and she . . had a dangerous and violent temper . . was ungovernable, lazy and totally unfit for a house servant . . well known to the defendant.' . . the defendant, at the time of the sale, spoke in high praise of the girl as a house servant and field hand, except for ploughing, etc." The price for which she was sold, was $390. [437] "No return of the slave was . . offered to be made." Verdict and judgment for the defendant affirmed.

Lowe v. Morris, 4 Sneed 69, September 1856. "1855, . . he purchased . . [70] two slaves . . for . . twelve hundred dollars. . . general warranty of soundness and of the age of one of the slaves. That said slave was near twenty years older than represented . . laboring under various diseases, . . and was worth at least four hundred dollars less than . . if . . sound and of the age represented"

Lea v. White, 4 Sneed 73, September 1856. "petition . . alleging that the defendant . . [74] detained from her two free girls of color, . .

bound as apprentices to her . . writ of *habeas corpus* . . granted, . . quashed . . affirmed." See same *v.* same, *infra.*

Seay v. Bacon, 4 Sneed 99, September 1856. In 1831 [101] "Seay and wife removed [from Virginia] to Tennessee, and brought with them . . Dinah, . . some thirteen years of age. . . 1832 . . conveyed . . Dinah . . for . . four hundred dollars." Before 1852 "Dinah gave birth to six children,"

Lea v. White, 4 Sneed 111, September 1856. Action for a libel. "charges that, in a return to a writ of *habeas corpus* for two apprentices[1] . . [112] the defendant . . published a . . scandalous libel . . 'that . . the order binding out said children was revoked,' on the ground 'that said Mary C. Lea was . . utterly unable to support them, . . said children were cruelly neglected and maltreated by . . her . . and there was reason to believe that they would be sold . . as slaves.'"

Held: [115] "within the class of absolutely privileged communications, . . not actionable."

Bugg v. Franklin, 4 Sneed 129, December 1856. [131] "In 1819 the parties removed [from Virginia] to Tennessee, . . bringing their respective negroes,"

Carter v. Peck, 4 Sneed 203, December 1856. [204] "purchased . . through tickets [on the stage-coach] for himself, his wife, and servant,"

Turner v. Fisher, 4 Sneed 209, December 1856. [210] "Turner, a free man of color, died . . in 1853. . . bequeathed [his small personal estate] jointly to his wife and children. . . The children . . are in the condition of *slavery*: . . not the issue of the [widow] . . but of a female slave, the property of a stranger to the testator, to whom they also belong. The widow dissented"

Held: "the 'children' . . are incapable . . of taking any benefit . . [211] one-third of the personal estate [goes to the widow.] . . [212] The remaining two-thirds . . will be charged with . . expenses of the administration. And the residue thereof . . declared to have escheated to the State for the benefit of the 'common school fund,'" [McKinney, J.]

Baxter v. Stewart, 4 Sneed 213, December 1856. [214] "On or before the 25th day of December next, I promise to pay . . two thousand dollars for the hire of [twenty-two] . . negro men, . . and I bind myself to give them the iron-works' clothing. . . 1854."

Searcy v. Carter, 4 Sneed 471, December 1856. Till 1833 [277] "Searcy had him . . making his crops, or hiring him out . . sometimes running him off to Missouri and getting the hire from there, . . [278] the children were too young to hire or to be of much advantage; but Grace . . engaged in washing and . . other home work, . . being there with her children,"

James v. Carper, 4 Sneed 397, April 1857. [398] "an action of trespass brought . . by Mrs. James . . Champ, the keeper of a public-house

[1] See same *v.* same, *supra.*

. . hired . . [her] slave Bill . . for a few days . . to assist as a servant . . [399] at seventy-five cents per day. . . Carper [a guest] . . on retiring . . placed his pocket-book, containing about one hundred and twenty dollars, under the head of his bed, and in the morning forgot to remove it. . . mentioned the matter to Champ [who] . . inquired of . . Bill—who made up the bed . . the slave replied that he put it back where he found it, . . Champ . . found . . as the slave had stated, but there was no money in it. Without further inquiry, Champ immediately ordered the slave to go to the stable, and proceeded there himself, in company with the defendant and . . Simpson. Champ stripped the slave, 'and . . bucked him over a wheelbarrow;' took out his knife, and threatened to *castrate* the slave if he did not give up the money, the slave earnestly declaring his innocence . . Champ then took a martingale and inflicted some twelve or fifteen blows . . when he was called to the house. On leaving . . he told Carper . . to whip the God damned negro's guts out, unless he gave up the money.' The defendant then tied him to a stall, and continued . . with the martingale, the slave all the time protesting his innocence. Champ then . . returned him to the plaintiff. . . physician . . called in . . shoulders and back were bruised and wounded, . . skin was broken in several places, . . [400] that some of the injuries had the appearance of having been done with the ring of a martingale, and his shirt was stained with blood; that the slave complained of his kidneys being affected, and also of an injury to his head. The proof clearly shows that the slave was entirely innocent, and that, immediately after the beating . . it was ascertained that a vagrant white man about the house had committed the theft;"

Judgment for the defendant reversed and the case remanded: [402] "the hirer must always, at his peril, be able to show . . reasonable ground for the chastisement, and that it did not . . exceed the bounds of moderate correction, . . [403] One of the great dangers to the owners . . is the reckless and wanton disregard, on the part of hirers, of the safety of the slave" [McKinney, J.]

Gass v. Mason, 4 Sneed 497, September 1857. [498] "in 1846 complainant was stricken with paralysis, . . [499] deprived of her powers of locomotion and of speech, . . that she was the owner of the [female] slave . . whose services were her only means of support; that this slave had waited upon her during her entire affliction, . . about eight years; that she better understood the signs by which she signified her wants . . than any other person,"

Railroad Co. v. Fulton, 4 Sneed 589, September 1857. [590] "another slave, the brother of Jack, was in the service . . of the Railroad at Atlanta, and the master of transportation . . had given to the said slave . . a 'pass,' authorizing him to go to Chattanooga and return again . . Jack became possessed of this 'pass,' and the conductor, believing [it] . . genuine, and Jack to be the slave named . . 1856, . . conveyed him to Atlanta free of charge. Soon . . seized and sold to satisfy a judgment against the person from whom the plaintiff [Fulton]

had bought him, and who, . . by the law of Georgia, had a valid lien" "The Court gave judgment for the plaintiff for nine hundred dollars,"

Affirmed: [591] "the agent . . is bound to inquire and know that the owner has given permission"

Major v. State, 4 Sneed 598, December 1857. See same *v.* same, p. 558, *supra.* [598] "After several changes of venue and three several convictions, he was again arraigned . . August Term, 1857, . . convicted and adjudged to suffer death."

Judgment reversed, and the cause remanded for another trial: [611] "The main witness is not only contradicted by three credible witnesses, but she flatly contradicts herself, and firmly persists in it." [602] "The prisoner . . [603] had lived on the same plantation where she was for years; . . had slept in the same room with her and her mother after he was grown; . . had never given her or her mother a saucy word; . . She was then asked if she did not have great feeling against the prisoner? . . she had: that she wanted him and his counsel, and all that would take his part and defend him, hung; that she could . . hang him herself, and saw his head off with an old saw, and would do so if they would let her, and also the counsel that defended him. . . [604] [Her mother] testified . . The prisoner . . had a brother in the neighborhood . . now in Kentucky . . taller, more slender, and brighter-complected . . no other slaves in the neighborhood for four or five miles. . . she never heard him [the prisoner] say a . . smutty word in her life. . . asked if she had not strong feelings against the prisoner? She said she could cut off his head with a case-knife, and be a week at it."

Bartee v. Tompkins, 4 Sneed 623, December 1857. [632] "1840, Shelby sold . . Peter . . for $1075."

Randolph v. Wendel, 4 Sneed 646, December 1857. Mary Randolph's will, 1827: [647] "Ailsey and her child are not to be sold for the payment of any of my debts;"

Shelton v. Johnson, 4 Sneed 672, December 1857. [678] "removed with the slaves [from Virginia] to Tennessee in 1820."

Cole v. Cole, 5 Sneed 57, December 1857. [61] "Her delusion consisted in ungrounded . . apprehension of conspiracies against her life by her own slaves, and her kindred, and others. . . [63] sold slaves, purchased and made up her negro clothing,"

Jones v. Walkup, 5 Sneed 135, December 1857. In December 1855 two slaves were sold by commissioners for $2074.

Luna v. Edmiston, 5 Sneed 159, December 1857. [160] "I purchased . . in 1836, a mulatto woman . . and her four children, for . . $1350."

Scruggs v. Davis, 5 Sneed 261, December 1857. [262] "the slave, having run away, was arrested in Kentucky, and brought aboard the defendant's steamboat . . by the plaintiff [owner of the slave], and the passage of both paid . . The master had his slave securely tied with his hands behind him, . . fastened to a post. . . [263] Smith, the engineer, [testified:] . . 'he untied him and put him to pumping water . . and

that defendant . . saw him, that after . . pumping, he tied his hands behind him again, . . but did not tie him to the post . . on the next day, [also] . . Scruggs saw the negro walking on the deck . . but he never authorized the negro to be untied,' . . on the arrival at Nashville he was missing," See same *v.* same, p. 576, *infra.*

Insurance Co. v. Hamilton, 5 Sneed 269, December 1857. [270] "I hereby make over this policy of insurance on my life, to Adelaide Eliza Goram, a colored woman; and desire that, at my death, the amount, say five thousand dollars, be paid to her. . . [271] 1849." "The assured died . . 1855." The assignee "resides in New Orleans, . . [278] avers that she is a *free woman,*" Decree in her favor, affirmed.

Arendale v. Morgan, 5 Sneed 703, December 1857. [709] "1854, the complainant made an exchange of slaves, with a stranger, . . Vichouse, in . . Alabama, the residence of the complainant. . . [710] 1855, the slave . . was demanded from the complainant, by the agent of . . a citizen of Georgia, from whose possession said slave had been feloniously taken,"

Prince v. Broach, 5 Sneed 318, April 1858. [319] "The girl . . was given [to his daughter] . . in 1847, when she [the negro] was very small,"

Parker v. Thompson, 5 Sneed 349, April 1858. [350] "that the hiring [for one year] was general, and that this negro [man] worked with other slaves of the defendant . . usually got up about daylight, and were employed in feeding the stock until breakfast, then they went to the farm and worked there. After supper they usually worked until 9 or 10 o'clock; sometimes sacking dried fruit, peas, etc., and sometimes they ginned and baled cotton; at other times they removed fence, etc. . . defendant's order for them to work every night, except when it rained or snowed, but to stop at 9 o'clock. . . not usual for farmers in that neighborhood to work so late . . unless . . in saving fodder or hay, . . the defendant did not live upon his farm; was only there . . once in every two or three weeks; . . was a reasonable and prudent man and a good master. That his overseer 'was a kind, prudent man and indulgent to the negroes.' . . did not attend the negroes after night. This was usually done by one of the clerks in the store, he worked himself, with the negroes, and did as much as either of them, without injury to himself. . . September, 1852, the slave . . was sent out with others . . [351] to bind up the fodder and stack it in the field; instead . . [he] and another, concluded to haul [it] . . to the barn, . . fell from the wagon and . . died . . This occurred between 9 and 10 o'clock at night, and the negro was worth one thousand or twelve hundred dollars." Verdict and judgment for the defendant, affirmed.

Kirkwood v. Miller, 5 Sneed 455, April 1858. Action of trespass for killing the slave of the plaintiff. [456] "the defendants relied [in the trial in 1857] . . upon the ground that, at the time they slew the slave, they had good reason to believe . . that an insurrection of the negroes

was then contemplated, and that the slave in question was engaged in it. In that trial, . . [457] permitted . . to give in evidence, newspaper publications, the proceedings of public meetings, and the general fears . . of the people, on that exciting subject, before and at that time. We reversed that judgment [for the defendants], and gave a new trial, . . grounds, . . illegal evidence . . no *legal* evidence to sustain the verdict, . . [458] Nothing appears connecting this slave, in any way, with any insurrectionary scheme, if any existed outside of the distempered imagination of the people, . . [459] He had not misbehaved himself in any way, . . and was entirely . . docile. After being . . unlawfully tied with a rope, he became alarmed . . and in endeavoring to make his escape from this unlawful confinement, was slain by [Kirkwood] one of his pursuers," [458] "The case went back, . . verdict against all of the defendants, for the value of the slave, $800."

Judgment thereon, affirmed: [459] "This species of property, above all others, must be protected . . from *wanton* abuse. . . [460] Every description of mob-law, and reckless invasion of the rights of others, should be visited with the highest penalties." [Caruthers, J.]

Hollingsworth v. Miller, 5 Sneed 472, September 1858. In 1828 a father gave a negro girl, then a child, to his daughter, some six or eight months after her marriage.

Marley v. Cummings, 5 Sneed 479, September 1858. [481] "1858, the Chancellor . . ordered the slave to be sold for distribution amongst the creditors."

Railroad Co. v. St. John, 5 Sneed 524, September 1858. [529] "The negro boy [about eight years old] of the plaintiff was asleep upon the road at a water-gap; he could have been seen a quarter of a mile before . . reached by the locomotive . . at first supposed to be a coat . . discovered to be a person, and no signal or alarm was given . . The excuse . . is that they would have been ineffectual, on account of their proximity" The slave was killed and his owner recovered damages to the amount of $962.33. Judgment affirmed.

McKenzie v. Kerr, 5 Sneed 539, September 1858. [541] "The slave is proved to have been an excellent cook, wash-woman and ironer, and the reason given by defendant for selling her, was her . . ungovernable temper. . . [542] The disease of which she died, appears to have been dropsy."

John (a slave) v. State, 1 Head 49, September 1858. "indicted [at the December term, 1857, just before the close of the term] . . for the murder of a female slave, the wife of the prisoner. . . [50] not arraigned . . until . . April Term." He then asked a continuance, "on the ground of the great excitement in the public mind to his prejudice. . . refused" He was [49] "found guilty, and sentenced to be hung." Judgment reversed, and the prisoner remanded for a new trial.

Traynor v. Johnson, 1 Head 51, September 1858. [52] "The defendant kept a public hotel and the slave was hired to him . . 1856, upon

an express agreement that he was to be employed as a servant in the hotel. . . the defendant *subhired* the boy to . . Cowan, to work in a brickyard . . employment, which the defendant was informed, at the time of hiring, the plaintiff would not suffer him to be engaged in. . . [53] taken ill with a violent dysentery, . . A physician was called in . . 'saw the plaintiff [later] and suggested . . she had better have the boy brought to her house,' . . well attended to at Cowan's; but . . his opinion that he would do better with the plaintiff;" He died in a short time. Held: [55] "not . . sufficient evidence of a waiver of the conversion."

Kelly v. Davis, 1 Head 71, September 1858. Suit [72] "commenced . . under the third section of the act of 1813, ch. 135, which prohibits all traffic with slaves (except for articles of 'their own manufacture') without permission of the owner. . . [73] he had recovered a former judgment against the defendant for $10, . . [74] for the same cause of action"

Abram (a man of color) v. Johnson, 1 Head 120, September 1858. A bill for freedom. Levi Greer presented a petition to the county court for the liberation of the complainant, his slave, and gave bond to indemnify the county. Johnson, clerk of the county court, then [122] "took a conveyance of complainant . . with full notice of . . [his] right to freedom." "only holds him in mortgage to secure $300, and complainant is worth greatly more . . strong reasons for believing that a faithful record of the action of the Court . . was not kept. . . nothing can be found but the petition. Johnson told complainant not to be uneasy, that he would write out his free papers the first opportunity, and that he was then as *safe* as if he had them."

Held: [123] "The complainant must be sent to the Western Coast of Africa, and a decree for his freedom will be drawn upon the terms . . laid down in the act of . . 1854, ch. 50.[1] . . Defendant Johnson will pay the costs." [Wright, J.]

Young v. Wilkinson, Thomp. Cas. 161, September 1858. [162] "He owned [in 1838] a tract of 867 acres of land, and thirty-two slaves,"

James v. Drake, Thomp. Cas. 170, September 1858. "an action . . instituted by . . Drake[2] . . to recover the value of a slave named Bill, . .This slave had been hired by the defendants [T. G. James and T. C. Simpkins] for the year 1847, and used on the farm of the defendant James . . [173] J. D. James . . stated that he had returned from the South [New Orleans] in June [August] 1847, bringing home with him a negro girl named Kitty, and others; that he afterward had the small pox; that the girl Kitty some two or three weeks after his return was sent to the house of the defendant [James] to stay, and ['some four or five days after'][3] took . . the small pox." [171] "the defendant

[1] Acts of 1853-1854, p. 121.
[2] Same *v.* same, 3 Sneed 340.
[3] *Ibid.* 342. "'she had a breaking out upon her, which was believed to be . . measles;' but which proved to be small-pox."

James, was aware for some days, or weeks before the negro Bill was attacked with the small pox, that the disease was in his family and amongst his negroes, but did not have Bill vaccinated . . and he took the small pox subsequently, and died ['in a few days thereafter'] . . whilst in the defendant's possession. . . [173] there is not . . the least evidence of a want of care in the treatment of this slave after he was attacked. On the contrary, . . Mr. James remained on his farm during the whole time of the slave's illness, and visited him several time a day."

Judgment for the plaintiff (Drake) affirmed: [172] "it was gross neglect in [the defendant James] . . not to have had him [Bill] vaccinated. He was as much bound to protect the slave from danger, and the taking of the disease, before he was attacked, as in the treatment of him afterwards. . . The omission of the plaintiff . . to inoculate the slave anterior to the hiring, furnishes no excuse whatever to the defendant." [Wright, J.]

Saunders v. Harris, 1 Head 185, December 1858. [199] "1843, Mrs. Saunders sold . . for $800, a negro boy . . son of old Lydia, . . died . . 1851, having made a will directing that her two servants, Lydia and Molly, have the privilege of living with whomsoever they pleased;"

Dickenson v. Cruise, 1 Head 258, December 1858. A negro man was hired, January 1, 1856, "for that year, for $132. . . delivered . . the next day, and . . the same month, died of typhoid fever, . . [259] rendered no service . . the attending physician . . makes it probable that the disease . . was upon him when he was hired." The plaintiff's agent, "who hired the negro . . proves . . That he looked as well as he ever did, . . and that he had seen him chopping wood . . during the Christmas holidays. . . the defendant . . was to loose [*sic*] all time, and furnish the usual clothing—the plaintiff paying the doctor's bills, if the slave became sick." Held: the hirer is bound for the hire.

Crittenden v. Posey, 1 Head 311, December 1858. [318] "the slaves [were] brought to this State" from Virginia, about 1836.

Polk v. Fancher, 1 Head 336, December 1858. Action on the case. [337] "The Court [below] permitted the defendants to prove the character of the slave to be bad, . . Most of them stated that they had never seen . . him until . . apprehended for rape and murder, and put into the jail . . and in view of that charge . . considered him worth nothing. . . already in manacles, . . [338] no chance for escape. Some of the defendants by written agreement to stand by each other, and others without having signed it, moved by concert to the jail, broke down the door, took out the negro, and hung him till he was dead." The jury returned a verdict for one cent damages.

Judgment thereon reversed, and a new trial granted: [338] "The courts and juries, public officers and citizens, should set their faces like flint against . . mobs in all their forms. . . [339] His value should be determined from age, appearance, health, and . . what he would sell for in the market; . . [340] The general moral traits . . would constitute elements in the estimation of value, but without reference to the accusa-

tion upon which he had not been tried, . . [340] his honor also erred in holding that this was not a case in which the jury might . . give exemplary and vindictive damages. . . It is just the kind of case . . [341] The verdict was a mockery of justice." [Caruthers, J.]

Looper v. Bell, 1 Head 373, December 1858. [377] "the attending physician . . proved that the slave died . . of scrofula; . . that the slave stated that he had labored under an attack of a similar kind for several years past; . . from a post mortem examination, he believed the statement correct." Held: the evidence is admissible.

Kearley v. Duncan, 1 Head 397, December 1858. [398] "Received . . fourteen hundred dollars for . . Arzilla and two children, sold under decree of Court by . . commissioner and administrator . . said negroes sound in body and mind, and slaves for life . . 1857." [399] "The unsoundness of the slaves . . of a nature . . to render them of no value, and the defendant's knowledge, are sufficiently established."

Ingram v. Smith, 1 Head 411, December 1858. [424] "when her father delivered Jenny [then a small girl] to her, 'he told me to take the girl, go along home with her, and make her wait upon me.'"

Vaden v. Vaden, 1 Head 444, December 1858. [446] "They returned [to Tennessee from North Carolina] in 1812, . . bringing . . Esther, then very young, . . bought . . for about $275,"

Word v. Cavin, 1 Head 506, December 1858. A negro man was sold for $800 in 1850. No warranty of title. Less than a month after, his true owner instituted an action of replevin, and her title was established.

Hodge v. Blanton, 1 Head 560, December 1858. [561] "The trespass complained of, is the digging a grave, and interring the body of a negro child, the property of defendant, within . . a private burying-ground belonging to the plaintiff," reserved in sale of land to defendant. The clause declaring the reservation was construed so as to exclude the grave of the negro child from its boundaries.

Owen v. Hancock, 1 Head 563, December 1858. Jenny's children [568] "had increased to seven; that four of them had been sold,"

Gassaway v. Hopkins, 1 Head 583, December 1858. In 1820 [589] "he went . . with some five negroes for sale, to Alabama [from Kentucky], . . one of them . . Lucy [a dower slave], then about fourteen or fifteen years old," "she died in 1853, leaving ten children, . . one sold"

Towles v. Towles, 1 Head 601, December 1858. "The personal estate, exclusive of the slaves, will fall short of paying the debts by a large amount—enough to take the proceeds of most of the slaves"

Jones v. Allen, 1 Head 626, December 1858. Action to recover the value of a slave. [632] "1857, Jones had a corn-husking. He invited his neighbors . . and sent a message to Allen, requesting him to send help. About twenty five white men, and seventy-five negroes assembled, after dark; . . among [them] . . Isaac, the property of Allen. About ten or eleven o'clock . . the slaves were called to supper, and after supper,

. . directed by Jones to go home. . . some, (and Isaac among the number,) remained . . [633] some half an hour, . . wrestling. . . a white man ['who came there drunk, and without being invited'] . . without any provocation, . . stabbed him mortally, . . the messenger . . to Allen for help, did not deliver the message, but Jones was not informed . . until sometime after the murder . . no direct evidence that . . Isaac went . . by the permission, or with the knowledge of his master. . . Jones handed around spirituous liquor to the hands while at work, . . no intimation that Isaac . . was intoxicated," Verdict and judgment for the plaintiff (Allen) for $1050.

Judgment reversed: [636] "By . . universal usage, they are constituted the agents of their masters, and are sent on their business without written authority. And in like manner, . . sent to perform those neighborly good offices, common in every community. . . are allowed, by universal sufferance, at night, on Sundays, holidays, and other occasions, to go abroad, to attend church, to visit [relatives] . . and to exercise other innocent enjoyments, without its ever entering the mind of any good citizen, to demand *written authority* of them. . . [638] verbal consent may . . be implied from circumstances. . . But, supposing . . that the slave merely of his own volition, went . . [no] conversion." [McKinney, J.]

State v. Bonner, 2 Head 135, December 1858. Held: as [138] "the sale of liquor by a slave is a criminal offence,[1] . . [139] the defendant [who bought liquor from him] [2] . . is liable to be prosecuted . . as if the offence charged upon the slave had been committed by a white man."

Leetch v. State, 2 Head 140, December 1858. "an indictment under the act of 1831, ch. 103, secs. 1 and 2, . . the first which has come before us. . . [142] It is a police regulation, . . cannot, however, . . apply to . . congregations of slaves on occasions of funerals, preaching, and other ordinary lawful purposes, by permission . . express or implied. The present case does not fall under . . those exceptions. It was an assembly of . . forty or fifty, for social enjoyment, . . without . . even the knowledge of the owners, from anything that appears. . . The defendant was convicted and fined fifteen dollars. We affirm the judgment." [Caruthers, J.]

Brown v. State, 2 Head 180, December 1858. [182] "Brown . . a grocery keeper . . being suspected of selling liquor to slaves, a plan was concerted for his detection. . . before daylight, one of the owners and another . . gave the slave an empty flask and a dime, and the owner directed him to go to Brown's . . and get . . liquor. The slave proceeded to the back door . . admitted by Brown, . . came out with the flask full . . The owner and person . . with him, . . within three or four feet . . where, unperceived by Brown, they could distinctly see," Brown was convicted and sentenced to pay a fine of $50, [181] "and to suffer four months imprisonment . . and declared incapable of ever hereafter obtaining a license for the sale of spirituous liquors" in the county.

[1] Act of 1829, ch. 74, sect. 1, and act of 1835, ch. 57, sect. 2.
[2] Before the new code went into operation.

Judgment affirmed: [182] "the master was not present . . in the sense of the law. . . such a ['*visible*'] presence as necessarily implies . . assent to the act of selling" [McKinney, J.]

Beasley v. Jenkins, 2 Head 191, December 1858. Will, 1837: [192] "to sell, immediately, . . his negro man"

Woods v. Burrough, 2 Head 202, December 1858. In 1856 a negro man was sold [205] "at public auction . . at . . $1053.00,"

Pilcher v. Smith, 2 Head 208, December 1858. [209] "1846, . . Hannah Smith . . covenanted to convey to Hannah Higgins (a free woman of color) a lot of ground in Nashville, for . . $350."

Gee v. Graves, 2 Head 239, December 1858. [241] "Received . . five hundred and twenty-five dollars for a negro girl . . aged twenty-one or two years, . . 1840."

Conner v. Crunk, 2 Head 246, December 1858. About December 1, 1854, James Crunk, a physician, bought [247] "Lucretia, about 25 years old, and her son, Jordan, about six, . . as unsound . . for $600." "his vendor, Dr. Burdett, . . says they were very delicate; that he [Burdett] purchased them as 'unsound property,' and sold them with a full disclosure . . James, told witness, . . that he knew they were diseased, but that 'he could make something on them by patching them up.' Afterwards [December 27] . . 'sent them to Alabama by his [insolvent] brother Jeff., and Jeff. had sold them.'" "for $1150, and executed *his* bill of sale warranting title and soundness. The negro woman died . . a few days after . . [248] [James] boasted that he had made from five to seven hundred dollars upon the negroes." Action was brought upon the ground of deceit. [250] "no fraud imputed as to the boy, he having been . . retained as sound;"

Held: the plaintiff was entitled to a verdict for the price given for the woman, with interest.

Fisher v. Pollard, 2 Head 314, April 1859. In 1857 Pollard sold [315] "a slave named Bill, for $800, . . provided the slave, then runaway, could be obtained in possession by the vendee. . . [316] The contingency . . happened,"

Adams v. Mayor, 2 Head 363, April 1859. Ordinance: [364] "That all negro traders who shall expose negroes for sale within . . the town of Somerville, . . shall pay a yearly license tax of twenty dollars." Further, "that if any person shall exercise the privilege, without first obtaining a license, 'he shall . . pay double' . . [365] Adams . . exposed negroes for sale, and sold one . . 1856, without obtaining a license," Judgment for the corporation, affirmed.

Dement v. Scott, 2 Head 367, April 1859. [369] "The slave was hired out at public auction [for the year 1856] . . The auctioneer states that the terms proclaimed were, . . 'not to work on railroads, mills, rivers, boats, or public works.' . . the defendant stated . . the terms precluded him. . . that he was about to build a new mill, . . [The guardian of the owner] . . then told him to bid on. . . other testimony . . that the

boy was not to work in mud or water. . . the slave was put to digging a mill-race and foundation for the mill, . . exposed to standing in mud and water, . . death . . caused." Judgment for defendant, reversed.

Nored v. Adams, 2 Head 449, April 1859. Action for breach of warranty of the soundness of a slave, conveyed in 1857. [450] " 1858, . . during the pendency of this suit, [witness] . . had a conversation with the girl . . in the street, . . 'The girl wanted him to buy her; he told her that she was diseased; She replied that she was sound when she went to plaintiff's; that she had become diseased since . . from carrying wood and water, and meal and flour from the mill; that plaintiff's was a hard place to get along at; that she had been whipped . . and bore the marks upon her back; and that she would go anywhere in preference to living with plaintiff.'" Judgment for defendant reversed: "This entire statement of the witness ought to have been rejected."

Isaac (a slave) v. State, 2 Head 458, April 1859. "convicted of the murder of a white man, . . and sentenced to be hung."

Judgment reversed and new trial granted, because the court had recalled a juror, after having discharged him.

Railroad Co. v. Jones, 2 Head 517, April 1859. Jones hired to the Railroad Company, "for the year 1856, two negro boys . . [518] at twenty-three dollars per month, for each. . . 'all . . liability to accidents, . . covered by the pay; . . company assuming no responsibility for damages from . . any cause whatever.' The slave . . was lying on the track . . most probable that he was under the influence of liquor. The engineer . . 'thought it was a carpet-sack, or an old bag of clothes.' The train was stopped, but . . all the cars, except one or two, had run over [him.] . . the road . . was straight," The plaintiff recovered judgment for $1232. Affirmed.

Smith v. Cozart, 2 Head 526, April 1859. [528] "Mrs. Cozart had raised the girl, and . . 1853 . . sold her to Smith. . . frequently importuned Smith to assent to a re-sale. . . 1856, . . Smith proposed to purchase [Mrs. Cozart's share in a house and lot] . . if Lightfoot [her agent] would take . . girl at $1000, . . excited . . his suspicions . . and he inquired . . if she was sound. Smith replied that 'she had had a cough, and suppressed menstruation . . temporary only.'" "agreed . . that Smith should convey . . directly to Mrs. Cozart, . . [529] 'Received . . one thousand dollars in payment of . . Maria, . . I consider the negro unhealthy, and sell her as unsound property,'" [528] "shortly after . . a physician . . found the girl had consumption . . [529] for six or twelve months; . . worthless. . . died . . 1857." [527] "an action . . for fraud . . There was recovery for $1,112.50." Affirmed.

Tomlinson v. Darnall, 2 Head 538, April 1859. [539] "The slave was found [by the patrol] from home without a pass, and attempted to escape, when he was pursued, knocked down, and whipped. . . The jury . . assessed the damages at fifteen dollars."

Reversed: [542] "If they exceeded the bounds of moderation . . they will be liable under a verdict . . on the proper issue to be raised by an amendment of the pleadings."

Henry v. Compton, 2 Head 549, April 1859. In 1855 [550] "a negro woman . . was struck off . . at $501,"

Parker v. Hall, 2 Head 641, April 1859. In 1843 [643] "a woman aged about twenty years, and . . her child, aged about two years" were bought for $600. In 1845 the mother and another child, about six months old, were sold for $600.

Sandeford v. Hess, 2 Head 680, April 1859. A negro woman was sold for $800 in June 1858; in August [682] "sheriff, by virtue of . . levies, sold [her] . . [683] at . . $700."

Traynor v. Johnson, 3 Head 44, September 1859. See same *v.* same, p. 566, *supra*. [46] "The defendant was substantially informed, at the time he hired the slave, that the plaintiff would not allow him to be hired to . . Cowan, on occount of the nature of the employment, though higher wages could be obtained . . [47] the defendant, after retaining the slave some two months, hired him to . . Cowan, for the remaining ten months, . . for a sum nearly equal to the amount . . he was to pay for the entire year's services . . put to labor out of doors, exposed to the sun, in mid-summer; . . when taken ill . . no physician was called in until the fifth day" The jury again found for the defendant.

Judgment thereon reversed and the case remanded: [46] "between the owner and hirer of a slave, there is a personal trust . . and a contract implied by law, which forbids the hirer to transfer the possession or services . . to a third person, without the owner's consent. . . [47] This presents a case of . . aggravated violation of the rights of the plaintiff, . . for which a jury would be warranted in giving the highest measure of damages." [McKinney, J.]

Johnson v. Byerly, 3 Head 194, September 1859. "Johnson carried on a large tannery . . A good deal of his leather was stolen, and he traced it to the slave of the defendants, . . received by Owens, . . from a slave, knowing that it was stolen. . . admitted his guilt, and agreed to pay . . $250, the supposed value of the leather, to keep the matter secret,"

Isaac (a man of color) v. Sliger, 3 Head 214, September 1859. [215] "The allegation of the bill [for freedom] is, 'that . . Henry [Sliger, his former owner], . . agreed with . . Isaac, that he should be free at the death of [his wife] . . in the event that he conducted himself properly up to the happening of that event.' . . Sliger died . . in 1834. . . bequeathed all his property . . to his widow during her life or widowhood, with remainder to his seven children. . . [216] witness heard the testator say, the evening he died, 'that he wanted his black boy, Isaac, set free at the death of his wife, if he was a good boy to her.' . . in the expectation of approaching dissolution." [215] "complainant . . served his mistress, up to . . her death [in 1855]. And although his treatment of her, and his general good conduct, are complained of by the defendants . . [216] the relief . . could not be successfully resisted on this ground."

[215] " attempt being made, soon after her death, by some of the children . . to sell complainant, this bill was filed."

Decree in favor of complainant reversed, and bill dismissed: [218] " The widow . . could not, as against the owners of the remainder interest, have emancipated the complainant."

State v. Adams, 3 Head 259, September 1859. [260] " indicted . . for stealing and harboring a slave, . . [261] of . . Gaut, . . of South Carolina," [260] " He gave bail for his appearance, which was forfeited; "

Isaac (a man of color) v. Farnsworth, 3 Head 275, September 1859. Bill for freedom. [279] " Isaac had served her faithfully for nearly a score of years," [276] " she proposed . . that if he would procure any one to advance three hundred dollars in gold or silver to her, she would give him his freedom, and gave him . . a written authority to make the best arrangement he could for the money. He succeeded in making a contract with . . Michael George . . to advance the amount . . [277] for eight years' services. . . she executed an absolute bill of sale [in 1846] . . with an understanding . . that he would, at the of the term, emancipate Isaac. . . About fifteen months before the termination . . the old lady . . sold Isaac to McCampbell . . and made him an absolute bill of sale, to take effect in possession at the termination of the eight years. Upon application to George to acknowledge this title, he refused, . . A bill was then filed . . to reform the bill of sale of George, . . compromised by the surrender, by George, both of his title and the slave, upon the payment . . by McCampbell, of one hundred dollars . . he not choosing to enter into litigation "

Decree in favor of the complainant, affirmed: [279] " she executed the purpose as far as it could be done by her, it being prospective, by parting with the title, and, in effects, conferring the right to freedom, incumbered with the eight years' service. She . . could not revoke what she had done. . . [280] McCampbell, will be allowed a credit for the unexpired term " [Caruthers, J.]

Acuff v. Rice, 3 Head 293, September 1859. In 1858 a negro girl was sold for $710.

Perry v. High, 3 Head 349, December 1859. Held: increase of the female slaves of the testator, born after the execution of his will, and before his death, do [350] " not go to the respective legatees . . of the mothers, . . but as to them he died intestate, . . distributable amongst his next of kin."

Brown v. Cannon, 3 Head 354, December 1859. Will, made in Georgia, in 1850, [356] " provides for a sale of . . slaves who may misbehave, by the trustees, who are to reinvest . . in other slaves,"

White v. White, 3 Head 404, December 1859. [410] "A. C. White . . was born in . . North Carolina, but had been a resident [of Pulaski, Tennessee] . . for forty years. . . He had accumulated . . a very large estate, consisting principally of money, and some seventy-five or eighty

negroes, many of them valuable mechanics. . . 1856 . . begun to entertain the idea of purchasing a Southern plantation," Will, executed in Tennessee, January 10, 1857: [406] "I wish all my negroes . . set free at my death, . . [407] [my nephews and nieces] to hire out all my slave property [at my death], with the exception of . . Nancy, . . aged about twenty-two years, for . . one year, or longer if necessary, . . to raise a fund to transport them to the western coast of Africa, and support them for six months after reaching there; . . to transport . . Nancy, immediately to Africa, with funds . . to support her for one year" [410] "About the first of the year 1857, he . . hired out most of his negroes in [Tennessee] . . for the year—two or three of his mechanics with the privilege . . of keeping them from three to five years. A few of his mechanics, . . to Memphis, and there hired them. . . [He then went] to . . Miss., to look for a place; [returned home] and . . [411] May, 1857, . . bought . . some seventeen hundred acres [in Mississippi], the deeds . . delivered to him at his office in [Tennessee.] . . 5th of June, . . we find him at Memphis, giving a pass to two of his negroes, hired at that place, to return to Pulaski. . . he returns to Pulaski, and hires the negroes who had been at Memphis, remarking to the [hirer] . . that he could give his note . . when, he, White, came back, . . We next find him in . . Missouri, . . some weeks purchasing [ten] slaves to take to his . . [Mississippi] place. . . arrived . . about the first of October. . . latter part of the month . . after he had built one log cabin [for his negroes] . . he took sick, and died upon a blanket . . no other bed clothing nor furniture of any kind whatsoever . . in the cabin. . . His office in Pulaski . . contained his bedstead, . . and other . . furniture. . . the will [in a bureau drawer.]" It was sent to Mississippi and admitted to probate there. [408] "the provisions [concerning emancipation of the slaves] . . were pronounced . . void as contrary to the laws of Mississippi," [1] His heirs and distributees filed a bill in the chancery court at Pulaski to have the bequest of freedom declared void. The chancellor held [406] "that the domicil of the testator was in Tennessee, and that the provisions of the will were valid by the law of this State;" Affirmed.

Huggins v. Moore, 3 Head 426, December 1859. Action of trover. "hired the slave . . for the year 1857, . . [to] proprietors of a steam flouring mill. . . to work in the mill, but not 'to work or act as fireman.' . . was required [so] to act . . and . . was *sub*-hired" "Judgment for the plaintiffs for one thousand dollars damages." Affirmed.

Brown v. Allen, 3 Head 429, December 1859. In 1859 [430] "Perry was . . worth $1100 and Jim about $600,"

Overton v. Allen, 3 Head 440, December 1859. In 1855 a negro man was hired for $100 a year.

Whitson v. Gray, 3 Head 441, December 1859. [442] "1857, . . sold . . a negro woman slave [twenty-nine and a half years old] and her

[1] Miss. Rev. Code, p. 236, sect. 3.

child for $1550. The bill of sale recites that the woman was about twenty-five . . The witnesses give their opinions as to the difference in value . . [443] vary from one to three or four hundred dollars in favor of the [latter] . . age. . . The Court . . held that the plaintiff [vendor] might prove that she was worth, with her child, more than the amount given, even if she had been twenty-nine and a half . . and if only twenty-five, about $1800. . . [444] the jury properly found . . no injury . . fraud without damage."

Norton v. Moore, 3 Head 480, December 1859. The purchaser "avers, that . . both . . slaves were unsound." Sarah Hitchcock, [483] "called . . to attend this slave as a physician," stated: [481] "I found her to be very much diseased; . . I laid my hand upon her abdomen, she shrunk from the pressure or from great pain, and instantly coughed up a profuse quantity . . her bowels were . . swollen . . and her blood-vessels . . distended" The overseer stated, concerning the other slave: [484] "She . . is . . almost, if not quite an idiot. . . If she is ordered to do anything, if she goes at all, she is as apt to do anything else as that which she was bid to do. . . would sleep always if she was not roused up." Held: admissible.

Gupton v. Gupton, 3 Head 488, December 1859. "1859, the owner of 10,000 acres . . about one hundred slaves,"

Jennings v. State, 3 Head 520, December 1859. Held: [522] "under *no circumstances*, not even in the presence, or by permission . . of the master, can spirits be '*sold or delivered*' to a slave, *for his own use*, but *only* for the *use* of the master, and even in that case, the 'owner or master' must be present, or send a written order, specifying that it is for himself, and the quantity . . not confined to licensed tiplers [*sic*]." [1]

Nickson v. Toney, 3 Head 655, December 1859. [656] "Winnie and Betty, of the value [in 1858], respectively of $900.00 and $416.00,"

Scruggs v. Davis, 3 Head 664, December 1859. See same *v.* same, p. 564, *supra*. [665] "He told the clerk he would rather die than return home, of which his master was immediately informed, . . and . . said there was no danger. . . his body was . . sufficiently identified, by the fact that his arms were still tied"

Judgment in favor of [owner and captain of the boat,] affirmed: the carrier was "bound to [use] ordinary diligence only in taking care of him"

Elliott v. Holder, 3 Head 698, December 1859. In 1854 [699] "the slaves were brought to Tennessee," from Alabama.

Stephenson v. Harrison, 3 Head 728, December 1859. Will of Samuel Winston, made 1845: [730] "'my tract of land near Spring Hill, and my house and lot in Spring Hill, and my lots in Franklin' . . to be sold . . and the consideration, when collected . . 'deposited in the . . Bank . . and also the . . money and debts due me, reserving to my wife any

[1] Code, sections 2676-2678, 2680, 4865.

of the last mentioned money, that she may need for the . . benefit of my negroes, during her life, and at her death, it is my will that all my slaves be set free, [7 Coldwell 195] and . . that the County Court appoint some good, disinterested man, to make the necessary arrangements for taking my negroes to Liberia;' . . that, in case any . . be unwilling to go . . they may choose masters in Williamson county, and that the money which it would cost to carry them to Liberia be paid to them here; but if . . not . . legal . . such slaves to be sold to the person chosen and the proceeds . . to be given, one-fourth to the slave so sold and the other three-fourths to . . the other negroes. . . [196] directs that if the County Court will not appoint a person to take the negroes to Liberia, the executors should appoint . . and that 'the money so deposited in the bank from the sale of my land and lots, together with any remaining money . . not otherwise disposed of, after all expense is paid, to be divided equally with my negroes that go to Liberia.'" Codicil, 1851, just before his death: [730] "that all my money . . deposited in the Bank by my executors, . . shall be applied . . to the same object . . as the money arising from my Spring Hill tract" [731] "at the death of the testator, . . about $4,000 of cash . . in the bank, and good notes to collect, of about $12,000. . . [732] a large amount was realized by . . the sale . . and the executors . . had used it in loaning at usury, . . large amount of profit"

Held: I. [733] "the slaves have a standing in court [according to '*our* liberal slave and emancipation Code, let *others* be as they may']." "where rights may be endangered, . . connected with a certain grant of freedom, to take effect in future. . . [II.] any profit . . would constitute an addition to the fund . . [734] and go with it to the slaves upon their emancipation." [Caruthers, J.] See Milly *v.* Harrison, p. 587, *infra.*

Lee v. State, 1 Coldwell 62, April 1860. [63] "The prisoner is a free man of color, . . regarded as prudent and humane, but upon one occasion, . . arrested for fast driving." [62] "convicted of involuntary manslaughter, . . [63] for the slaying of . . boy, between 3 and 4 years of age, . . run over . . by a hack driven by the prisoner, . . [60] deliberately saw the danger . . and yet drove on;" [62] "sentenced to the Penitentiary for five years, the highest term of punishment for this offence," Judgment affirmed: [66] "a more proper conviction would have been, for murder." [Wright, J.]

Bayless v. Elcan, 1 Coldwell 96, April 1860. [97] "1831, . . moved [from Georgia] to Tennessee with . . slaves."

DeGraffenreid v. Green, 1 Coldwell 109, April 1860. [113] "we are satisfied that the health of the slaves is endangered, their morals exposed to debauchery, their opportunities for escape to free States, made more easy, and the probability of a misapplication of the proceeds of their labor, increased, by their removal to Memphis; and, although . . the increase from their labor or hires is greater, their future and permanent value to the children, is impaired. . . [114] the trustee . . should . . keep them employed upon the farm." [Stephens, J.]

Roberts v. Westbrook, 1 Coldwell 115, April 1860. [116] "negro girl . . was struck off to . . Jarrett, . . at . . six hundred and five dollars. . . refusing to pay . . [constable] re-sold her at public auction . . at . . five hundred dollars,"

Queener v. Morrow, 1 Coldwell 123, September 1860. [124] "1853, perhaps, a trunk, containing about twenty-five hundred dollars in bank notes . . taken from the dwelling-house of the plaintiff [Morrow] . . [125] The defendant was . . subjected to a search, . . the slave Dan, said, that Queener 'got him and Gosh [slave of Queener, in Morrow's service],' to steal the trunk. . . denied by Queener. Dan also stated, that 'Queener talked to him in the field;' . . Queener replied, that 'he was in the field, but was not talking about Morrow's money!' . . the isolated admission . . that 'he was in the field,' was allowed to go to the jury." Held relevant.

Harris v. Bank, 1 Coldwell 152, September 1860. About 1855 [153] "a gift to Mrs. Harris, of . . $800.00, . . for . . purpose of purchasing a *nurse* for a child of Mrs. Harris, . . a negro girl was purchased . . but turned out to be . . of bad temper . . unsuited for a nurse, . . sold; and with the proceeds, . . [154] $950.00, . . 1856, purchased another negro girl . . and her child,"

Bank v. Nelson, 1 Coldwell 186, September 1860. [189] "The negro woman and child were sold . . at . . $1,200, . . a fair price,"

Brown v. Welcker, 1 Coldwell 197, September 1860. [198] "Brown agreed to pay $1,200 for the [man] slave, provided he were as likely as a certain slave belonging to him,"

McCloud v. Chiles, 1 Coldwell 248, September 1860. "December, 1850, and . . January, 1851, Henry Chiles conveyed certain slaves to . . Williams and . . Rodgers, respectively, by bills of sale absolute . . [249] reserving possession during his life. . . this method was resorted to, by . . [their] advice . . that . . the slaves could not be emancipated by Will, or otherwise than in the mode stated. Finding . . that they were fraudulently setting up claims . . as absolute owner, because the trust had not been expressed upon the face of the bills . . Chiles filed a bill . . 1853, . . to have the absolute bill of sale cancelled, . . their emancipation is re-affirmed to be his 'favorite object,' to secure which . . was the sole purpose of the bill. Pending that suit, Chiles died, . . [having] [250] made . . Will [1854] . . in which he provides for the emancipation of said slaves; and devises and bequeathes to them certain real and personal property. The widow dissented" [249] "1857, . . bills of sale were declared . . void,"

Held: by [251] "the *parol* trust, previously declared in favor of the slaves, [they] . . were vested with as perfect right of freedom, as it was in their owner's power to bestow; . . [252] they must be sent to the Western coast of Africa, unless they shall bring themselves within the exemption of the recent enactment upon that subject." [1] [McKinney, J.]

[1] Act of Feb. 24, 1854. "Provided, that nothing in this act . . shall be so construed as to apply to those who from age or disease are unable to go with safety."

Tally v. Smith, 1 Coldwell 290, September 1860. [295] "heard Mr. Tally say he would not sell [the negroes] . . that he never intended to separate them while he lived. Smith . . said, that he would work them out of him yet;"

Waters v. Barton, 1 Coldwell 450, December 1860. In 1842 [452] "his father, placed two slaves in his possession, to take with him . . to his home, in Texas,"

Arrington v. Grissom, 1 Coldwell 522, December 1860. Will, 1842, gave Sally to widow for life or widowhood, remainder to her children. [523] "In 1855, . . widow . . presented a petition . . asking to have . . Sally [[524] 'a capable, valuable servant'], sold . . that, by reason of her bad temper, violent passions, immoral habits, and refusal to submit . . she could not be managed; . . afraid to keep her in the family. . . had given birth to several children . . Upon the proof of . . Grissom [and one other], that it would be for the manifest benefit of the owners, that she . . be sold and sent off from the neighborhood, . . decreed, that she . . be sold; . . sold to . . Grissom, . . (who lived in little over a mile of the residence of petitioner,) for . . $700. . . [524] has given birth to several . . children, since"

Decree reversed: "the sale of the slave, so peculiarly valuable for her physical capacity of child-bearing, so far from being for the benefit of the owners of the remainder-interest, was an enormous sacrifice, though it may have been otherwise, as to the life-owner." [McKinney, J.]

Nelson v. Smithpeter, 2 Coldwell 13, September 1865. Will of Michael Smithpeter, who died in 1856: "Susan and Lucinda shall be emancipated, if the laws . . will permit them to remain in the State; or if they . . shall prefer to go to a (!) free country; and if not, then they shall enjoy a *quasi* freedom in this country, . . [14] have the right of managing and working for themselves; and it is my will my executors pay to each . . two hundred dollars, . . and allow them . . their clothing and kitchen furniture, which they . . may have . . at the time of my death." "A decree . . declaring the slaves . . free, and directing their removal to the Western coast of Africa. . . Susan, electing to remain and go into voluntary servitude, under the . . Act of 24th of March, 1858, a supplemented bill was filed by the executors, claiming Susan, and William Ross, the child of Lucinda, . . as the property of the estate."

Held: "The amended Constitution . . of Tennessee, adopted on the 22d of February, 1865, prohibits slavery or voluntary servitude, . . Susan and Lucinda, were . . entitled to take the legacy . . [15] entitled to the proceeds of their hire." [Shackelford, J.]

Thomas v. Thomas, 2 Coldwell 123, September 1865. [124] "With, or without cause, her confidence in her husband's fidelity was shaken at an early period of their wedded life, by the birth of a mulatto child. . . [129] this husband had been guilty . . of denying the paternity of the first child . . since deceased. . . [130] comparison . . was instituted between the features of this . . child and the mulatto child that occasioned so much trouble in the family. . . he attempted to induce one of

his negro men to criminate his mistress in adultery with himself. Speaking . . to one of his neighbors, he said the reply of the negro was, 'That if he had, his mistress made him.' . . the gross and unfounded accusations made against her, illustrate ['the . . state of his feelings toward his wife.'] . . A divorce from bed and board only, will be granted her." [Maynard, J.]

Bearden v. Taylor, 2 Coldwell 134, September 1865. In 1828 Minor, of North Carolina, sent to his daughter in Tennessee a negro boy, born in 1819, and a negro girl, born in 1814. In 1833 the girl was sold for $450.

McCroskey v. State, 2 Coldwell 178, September 1865. A man of color was found guilty of the malicious shooting of a free white woman.

State v. Davidson, 2 Coldwell 184, December 1865. [186] "subsequent to the adoption ['of the amendment[1] of the Constitution of this State, . . by which slavery was abolished, the defendant'] . . was indicted . . for the crime of rape upon a free white woman; . . The offense was committed . . March 1864, and the jury . . in addition to finding the defendant guilty . . also found that . . [he] was a slave at the time of the commission of the offense;"

Held: his [194] "being now a free man of color, constitutes no ground for arresting the judgment upon the verdict"

Brothers v. State, 2 Coldwell 201, December 1865. [202] "the alleged offense [horse-stealing] was committed in April, 1864, . . the prisoner was . . the slave of Mrs. Brothers, but . . had been acting as a free man, and occasionally working for his mistress under a contract of hire." "The jury found a verdict of guilty, and fixed the term of the prisoner's confinement in the Penitentiary for three years."

Judgment thereon reversed, and the prisoner discharged: I. the circuit court had no jurisdiction: [203] "Prior to the 22d of February, 1865, . . slavery had little or no practical existence in the State, but its legal existence was such as . . [204] for many purposes, to compel the Courts to recognize it as a subsisting institution. . . [II.] [211] a crime committed by a slave, the punishment of which is fixed by law, could not, after his freedom was declared, be punished with any heavier punishment." [210] "it was the policy of the law to inflict punishment . . so, as least, to affect the owner's interest . . not to confine them in the Penitentiary;" [Milligan, J.]

Younkins v. State, 2 Coldwell 219, December 1865. "a free man of color, . . indicted and convicted . . April Term, 1865 . . for stealing a hog. . . [220] told a colored woman . . he had a hog over the hill, and that he would give her a piece of it. She declined going further,"

Judgment reversed, and a new trial awarded: [221] "insufficient to establish the *corpus delicti*,"

Abernathy v. Black, 2 Coldwell 314, December 1865. Action of debt. [315] "By the 25th day of December next, I promise to pay John Black

[1] Feb. 22, 1865.

. . one hundred and fifty dollars, for the hire of . . Bob. The negro to have two summer suits and one winter, blanket and hat, and two pair shoes. . . if the negro is sick . . more than two weeks, Black agrees to lose it . . January 1st, 1859." Indorsed: "For clothing slave, blanket and hat, $7.35. For loss of time, $16.60. Balance due, $141.31." "some time after the slave had been in the service of [Abernathy] . . he ran off and returned to his master. . . [316] [Abernathy] formally demanded his return. . . [Black] told him . . if he would agree not to whip him, he would return the slave . . which he declined to do; and after consultation with his wife, . . [Black] positively refused to allow the slave to go back." Verdict and judgment for Black [315] "for $116 and costs"

Judgment reversed, and a new trial awarded: [317] "moderate chastisement . . was rather an incident to a contract of hiring than otherwise, . . [318] not . . a valid excuse for the non-performance of the contract." [Milligan, J.]

Brown v. Bibb, 2 Coldwell 434, December 1865. [436] "In . . 1817, the widow . . removed from Virginia to Kentucky . . carrying . . the negroes, . . In 1836, . . sold [one] . . to . . Hough . . [who] carried . . negro to Nashville . . In . . 1852, the widow sold, in Tennessee . . child" of the other.

Banks v. Banks, 2 Coldwell 546, December 1865. Will of Miss Anna J. Banks, made in 1858: [550] "Having long entertained conscientious and religious scruples upon the subject of slavery, and the slaves I own being family servants, and faithful and meritorious, I will, that immediately after my death, or after the death of my sister Mary, if she should survive me, but not before, the whole of my slaves, . . and any increase . . shall be set free, and transported to . . Liberia, . . ['some special legacies to certain slaves, mothers of children'] . . all the . . residue of my estate, . . to be sold" and the proceeds paid over [551] "to her before mentioned servants; upon their embarkation . . [554] gives to her executors in trust, if necessary, a sum not to exceed one thousand dollars, to purchase the freedom of . . Squire . . that 'we have hired him for many years, and he has been faithful to us.' . . providing for the transportation . . to Liberia, and his support for six months, in the event of his purchase . . 'I also give . . Squire, . . fifty dollars, to be paid . . upon his embarkation'" The provisions of the will of Miss Mary H. Banks, made on the same day, [551] "are precisely similar" excepting as to Squire. Bill filed in March 1865. [548] "Miss Anna J. Banks has been dead about six years; and Miss Mary H. Banks, about two years."

Held: [553] "by virtue of . . change in the organic law of the State, complainants are free persons of color, and have a legal right to remain in . . Tennessee, and take the . . legacies . . [555] Squire is not entitled to said one thousand dollars, . . has been emancipated . . by the Government, . . must go to the complainants, who were the slaves of [the Misses Banks] . . and the increase of the female servants, if any, . . But . . Squire, is entitled to the . . fifty dollars," [Gaut, J.]

Porter v. Blakemore, 2 Coldwell 556, December 1865. [557] "bill filed . . 1859, for the emancipation of George Porter, Jr., Martha Porter and Jane Bell Porter, . . by their mother . . a free woman of color. . . George Porter, Sen., the father of the complainants, . . by his industry and fidelity, . . so won the affections of his master [John N. Porter], that he granted him the privilege of purchasing his own freedom, at a price greatly below his actual value. . . [then] purchased his wife, with whom he had, for many years, lived . . and by whom he had six children born during the bondage of the mother, . . He emancipated his wife, and they were . . lawfully married, . . prosperous, . . [558] One after another, of the elder children were purchased and set free; but, before [all were purchased] . . John N. Porter gave the complainants to Thomas N. Porter, who . . permitted them to remain with their parents, and repeatedly declared his purpose never to separate the family, and as soon as the father was able to purchase them, to allow him to do so. . . [He] died, leaving no Will, . . necessary to resort to his slaves to pay the debts. . . [559] sale of complainants . . ordered, . . at public outcry, sold, and purchased by the father, . . Sixty dollars . . was paid, and a note . . for . . $990. . . [564] greatly below their market value," [559] "he raised the means necessary to pay for his children . . [564] in his extreme embarrassments, which seem to have followed him from this very purchase, and his great solicitude to reform his dissipated son, George, he, on more than one occasion, proposed to sell George; and did finally . . in trust, to secure the payment of his debts." The father [559] "died, without having emancipated his children, or leaving a Will . . [560] hopelessly insolvent. . . executions . . levied on George and Martha, . . confined in the county jail, to await a sale"

Held: [563] "the owner may part with his right . . in his slave . . even by parol contract, . . no doubt of the existence of a parol agreement between Thomas N. Porter . . and . . George Porter, Sen., that he was to have the privilege of purchasing . . for the purpose of emancipating them; . . [564] that the distributees and bystanders [at the administrator's sale] looked upon it as a purchase of his children's freedom." [563] "The right is a vested one; . . no one but the State can take advantage of it, . . [565] The decree . . dismissing the bill . . reversed, with all the costs . . and the cause remanded, for an account of the hire of complainants." [Milligan, J.]

Young v. Thompson, 2 Coldwell 596, December 1865. [597] "a decree . . directing the Clerk . . to sell ['for purposes of distribution'] . . April, 1859, . . Thompson, became the purchaser of . . Amanda, at . . $1,300, of which he paid $30 . . and executed his notes . . [598] for the . . balance, due twelve months after date, . . January Term . . 1865 . . report [of the clerk] confirmed, . . following July Term, Thompson . . asks the Court to set aside said sale, . . upon the ground, that . . 22d day of February, 1865, slavery . . was abolished, and . . the Court could not . . vest any title . . in him."

Held: [603] "The sale had been confirmed, and, thereby, the title . . became vested in him, . . the loss . . or that which may now seem to be a loss, must fall upon him." [Hawkins, J.]

Richardson v. State, 3 Coldwell 122, September 1866. Richardson "was presented . . July Term, 1860, . . for selling spirituous liquors to a slave.[1] A trial and conviction . . 1866. . . [123] fine of $50" Affirmed.

Pesterfield v. Vickers, 3 Coldwell 205, September 1866. [206] "1858, . . [Vickers] was partially intoxicated, and . . had a quarrel with a negro servant, who had placed a ladder on the street to clean the gas lamps. Some citizens . . prevented him from molesting the servant." Vickers was arrested and "taken to the lock-up"

Henly v. Franklin, 3 Coldwell 472, December 1866. In January 1860 a negro man was sold for $1,565.

Dibrell v. Williams, 3 Coldwell 528, December 1866. In 1857 a [529] "negro girl and her infant child, were sold under a decretal order" for $745.

Williams v. Sneed, 3 Coldwell 533, December 1866. In 1863 Sneed's daughters, [540] "during the absence of their husbands, some of whom were then confined in military prisons, went to the house of . . Sneed, and took the slaves . . by force, alleging . . that . . the slaves belonged to them, and they needed their services to get wood, make fire, etc."

Wirt v. Cannon, 4 Coldwell 121, April 1867. [128] "he became displeased with a family of slaves, and . . attempted to convey them, to his wife, . . with the understanding they should no longer remain on his place, and his wife might dispose of them to whom she pleased;"

Vancil v. Evans, 4 Coldwell 340, September 1867. Will, 1852: [341] "if either . . of the . . negroes . . should become dissipated and disobedient, the said negro, or negroes, shall, or may be, hired out;"

Coward v. Thompson, 4 Coldwell 442, November 1867. "a note for $200, executed . . 31st December, 1864, and due December 25th, 1865. . . [443] the consideration . . was for the hire of a negro slave for the year 1865."

Held: [444] "the defendant [to whom the slave was hired] . . must bear the loss [due to emancipation]."

Gholson v. Blackman, 4 Coldwell 580, December 1867. [581] "Gholson . . hired . . Ellen, to Blackman, for the years 1860, 1861, 1862 and 1863. . . Ellen, and her son . . continued in the service . . of Blackman from 1863 up to the 22d of February, 1865. The military forces of the United States occupied . . Clarksville as a military post during 1864, and up to the 22d of February, 1865; . . Blackman lived within the lines . . During this period, a great many slaves came within the lines, . . No master could control his slave. They hired themselves to whom they pleased, and received the hire. Many of the citizens of Clarksville were compelled to hire these negroes or do without servants, and it was their common practice to hire any negro boy they wanted, who would consent to live with them. Blackman paid Gholson for the hire up to 1864,

[1] Code, sects. 2677, 2679.

. . [582] At the first of the year 1864, the husband of . . Ellen, notified Blackman . . that from that time the wages must be paid to her; and accordingly, Blackman paid the woman her hire for . . 1864 and 1865." Gholson brought this suit "to recover the hire for . . 1864, and up to the 22d of February, 1865."

Held: payment to the slave did not discharge the liability to pay the owner. In the war measure of January 1, 1863, [586] "Tennessee was not one of the designated States, . . the status of . . slaves in . . Tennessee, was not changed; . . [587] The amendment to the constitution of the State, ratified . . 22d of February, 1865, is . . the deed of emancipation, . . [588] had the contest been between freedom . . and slavery . . and freedom had triumphed, then, perhaps, . . he, who was once a slave, would now be held . . free from the beginning of the struggle, or from the time . . he declared himself a freeman. But such was not the issue. . . as an incident to the struggle, slavery perished" [Hawkins, J.] Shackelford, J., dissented: [593] "in 1864, slavery was practically abolished in Tennessee. The government enlisted them . . provided for the families of the males, and treated them as freedmen. . . this species of property became contraband of war, . . controlled by the principles of international law, and of the laws of war. . . [595] The people . . of Tennessee had been declared to be in a state of insurrection . . 24th of April, 1863, instructions were . . issued . . by . . Secretary of War, . . approved by the President . . No. 100. Section 42 . . [597] The rights of the owner ceased as soon as she placed herself and son under the protecting influence of the armies of the United States."

Curd v. Bonner, 4 Coldwell 632, December 1867. [634] "the proceeds of two old slaves . . had been applied [in 1859] in the payment of debts; . . [635] 1860, . . Master . . in his report, . . states . . 'that a sale of the entire slaves should be made.' . . sold . . [636] October . . 1865, . . Thompson filed his petition . . alleging that he purchased . . Nancy, and her two children, Jack and Dallas—at . . two thousand dollars,—four hundred . . paid, and his note . . for the remainder."

Held: [641] "he must bear the loss . . The destruction of the institution of slavery was the inevitable result of the great contest . . the incidental prize," [Milligan, J.]

Wharton v. State, 5 Coldwell 1, December 1867. [2] "In 1860, . . indicted . . for an alleged rape, committed when he was about seventeen, and . . slave . . upon the body of [a free white woman] . . three times convicted . . twice sentenced to death, . . [3] third time, before this Court, under sentence of imprisonment . . for . . ten years."

Judgment reversed, and the prisoner discharged: [6] "The second section of the Act of 1866, chapter 40, by necessary implication, takes away the death penalty . . when committed by a colored man upon a white woman, after its passage, and substitutes . . imprisonment . . inconsistent with . . Code, sec. 2625; and if so, the fourth section of the Act of 1866, expressly repeals it [sec. 2625]. . . [7] The repeal of a penal statute, operates as a pardon of all crimes . . committed before that time . . except when . . [it] contains a provision expressly saving the right to prosecute. No such provision" [Milligan, J.]

McReynolds v. State, 5 Coldwell 18, December 1867. [19] "In 1856 the plaintiff in error . . a slave, and Eliza Elder, a slave, were married . . by Fred. Martin, a colored preacher; . . with the consent of the owners . . had one child. . . 1867, the plaintiff in error procured a license . . and [married] . . Betsy Edrington, a free woman of color." He was convicted of bigamy and "sentenced to two years imprisonment"

Held: [24] "having continued to live with the woman he had married in a state of slavery, it was a ratification" [Shackelford, J.]

Keith v. State, 5 Coldwell 35, December 1867. [36] "the plaintiff in error, while a slave in 1864, upon discovering the deceased, . . also a slave, in bed with the wife of the plaintiff in error, inflicted . . a wound of which he . . died." [35] "indicted . . November Term, 1865, . . March Term, 1867, . . he . . [36] was tried and convicted of voluntary manslaughter. . . sentenced to imprisonment at hard labor . . for . . three years;"

Judgment reversed and the cause remanded: [38] "the provisions of the slave code . . [were] virtually repealed . . because . . there were no slaves to punish. . . Had the jury, by their verdict, ascertained the fact, as it appears in proof, that the plaintiff in error was a slave at the time . . the prisoner [would be] discharged; . . a new trial . . [granted, when] this fact [can be] . . ascertained" [Hawkins, J.]

Barber v. Mason, 5 Coldwell 108, December 1867. By a will of 1852 [110] "the negroes are grouped into families, and these families disposed of . . [111] executor . . had sale made of some eight or nine young negroes . . born since the date of the Will"

House v. Woodard, 5 Coldwell 196, December 1867. [198] "Every bid was cried by the auctioneer [in 1855], and each slave knocked off to the highest bidder. . . [199] the children and sons-in-law bought all the slaves that were sold."

Bedford v. Williams, 5 Coldwell 202, December 1867. In 1847 Persons [203] "executed a deed in trust, to . . Bedford, whereby he conveyed . . Nelson, Amy, John, and Cynthia, for the 'sole use . . and comfortable support' of . . Letitia and Emily . . daughter of Letitia. . . and after the death of both . . for the support . . of the children of [Emily] . . 'If [they] . . [204] should wish any, or all . . sold, and other slaves bought in place of them; or . . prefer to have the money got for any or all . . I authorize . . trustee . . to sell' . . [Emily] [206] was the reputed daughter of [Persons] . . he publicly acknowledged her as such, and at all times manifested great tenderness . . for her. . . Letitia . . died without any formal emancipation; but that many years before her death, she and her daughter lived in a separate house, and her master . . cohabited with her . . and in every respect, treated her as a free woman." [204] "Amy and Cynthia went into the possession of the beneficiaries; and in 1858, . . Persons, sold . . Nelson and John, together with some sixteen other slaves—all he then owned—to . . Taylor, for . . $10,000. Taylor . . sold Nelson, and perhaps some others, to . . Chilton, who . . re-sold him to . . Persons, who . . died

in 1860, leaving . . Nelson, in the hands of the administrator. . . Chilton sold John . . to . . Tearell, who removed him to . . Mississippi, . . [205] this bill was brought by the trustee, and . . Emily, [Letitia being dead,] . . to recover the value of . . John [for whom Persons received $1,000], with interest . . and also the hire of . . Nelson and John, . . after the date of the trust deed. . . [206] The Chancellor decreed for the complainant;"

Affirmed: [210] "Persons, by implication of law, vested them with a right to manumission, and therefore conferred upon them the legal capacity to support the trust" [Milligan, J.]

Downing v. Johnson, 5 Coldwell 229, December 1867. Will, 1862: [230] "that my negro boy . . and all the rest of my property, be sold to the highest bidder,"

Newman v. Sloan, 5 Coldwell 390 (decided before Polk *v.* Pledge, *infra*, April 1868). "this slave, *when sold* by the Clerk and Master, labored under no mental unsoundness; but . . was . . greatly lessened in value by a dangerous rupture, . . all the parties, were ignorant of, . . [391] delivered to . . the purchaser, . . and held by him . . at the time of . . [the slave's] self-destruction;"

Held: [390] "to the extent the rupture lessened the value . . the purchase money should be abated, . . [391] this slave, after the Master's sale, was at the risk of . . the purchaser;"

Polk v. Pledge, 5 Coldwell 384, April 1868. [385] "The Master [in equity] proceeded . . March, 1861, to sell, . . Six of the negroes were sold . . at $5,231; one . . at $1,008; and one . . at $1,641. . . delivered . . notes . . taken . . [386] the war intervened, and . . the report of sale . . lost, or unavoidably destroyed. . . 1866, the complainant [administrator of former owner] . . substituted [copy] . . motion . . for its confirmation, and an order for the payment of the purchase money due" Held: [388] "the loss must fall upon the purchasers."

Hawkins v. Humble, 5 Coldwell 531, April 1868. [532] "On or before the 25th of December [1861] . . we . . promise to pay . . one hundred and thirty dollars, for the hire of a boy, Joe. We promise to find him two winter suits, two pair of shoes and socks, wool hat and blanket."

Grider v. Harbison, 6 Coldwell 208, March 1869. [209] "November, 1862, . . complainant agreed to take the slaves [mother and child, a girl,] in satisfaction of the $1,300,"

Douglass v. Cross, 6 Coldwell 416, April 1869. [417] "On or before the 25th of December next, we . . promise to pay . . five hundred and seventy-five dollars, for a negro boy, . . Jan. 11, 1858."

Armstrong v. Pearre, 7 Coldwell 171, December 1869. Will of Joshua Pearre, who died in 1847: [173] "all my slaves, over twenty-five years of age [to be sold to pay legacies], . . but none . . under" He gives to his executors "all his negroes under . . twenty-five years, upon the special trust that they should . . hire [them] out . . till . . 1853; that

on the first day of January, 1854, application should be made to these negroes to know whether they were willing to go to Liberia; and all . . willing . . should be free on that day; and those who . . refuse . . should be sold. Certain . . were to have the proceeds of their hire for a certain length of time previous to their emancipation; twenty dollars for each negro going to Africa were to be paid to the American Colonization Society, provided that society would undertake to transport . . and the remainder . . arising from the sale or hire . . to be divided between" his heirs. He [171] "does not expressly designate any fund for the payment of debts and expenses." The widow dissented. [174] "The three negroes over . . twenty-five ['old and of little value'] were sold . . [175] the Court decreed [December Term, 1852] . . that the slaves directed to be emancipated . . be hired out . . until the proceeds . . should be sufficient to pay all the liabilities . . [176] The negroes . . expressed their desire to go to Liberia. The total hire . . up to . . January, 1854, was $1,024.33, . . the slaves were hired out . . till . . October Term, 1860, when the Clerk and Master reported . . all the . . liabilities . . paid, and . . a large balance . . not sufficient to send the negroes to Liberia; . . [decree] directing . . to hire them out for the year 1861. . . do not appear to have been so hired after that time. . . 1867, . . [177] amount arising from the hire . . on hand . . was $3,107.43."

Held: [178] "This fund clearly belongs to those for whose benefit it was intended and by whose labor it has been created. . . The bequest of freedom is of a higher nature than a pecuniary legacy, and . . will not abate . . to satisfy such a legacy, or be compelled to contribute if it is absorbed by the debts" [Andrews, J.]

Milly v. Harrison, 7 Coldwell 191, December 1869. See Stephenson *v.* Harrison, p. 576, *supra.* The widow died in 1862. [198] "A supplemental bill was then filed by the next friend, on behalf of the negroes, . . stating that the negroes were now free, but in an unprotected condition, and without means of support, except the fund bequeathed . . the Court . . appointed . . a receiver to take charge of the negroes, and to hire out those capable of labor. On the same day, the next friend . . presented to the Court a written stipulation for the settlement of the litigation . . and a decree was entered in accordance with the said agreement; . . the executors were charged with a balance of cash in their hands, belonging to the fund of the negroes, (after crediting them with . . $8,498.98, for payment of debts, expenses . . and compensation to the executors,) of $27,177.44. They are charged with . . $6,645.29, as interest . . and are [further] credited with . . $4,823.33, for moneys advanced and for [further] services . . [199] The next friend . . waived all claim . . for the profits of speculations . . The making of such . . is positively denied"

Held: I. [200] "as . . the Court . . was satisfied . . that nothing further could be realized by pursuing a litigation as to that matter [profits], we will not . . disturb the decree in that respect. . . [II. The executors] [203] had no right to pay . . debts and expenses [[201] 'to the amount of more than thirteen thousand dollars'] out of the fund

belonging to the negroes, unless the fund first liable proved insufficient; . . If [so] . . and these have been paid out of the trust fund, then this fund is entitled to contribution from the other legatees . . [III.] [205] In the anomalous, half emancipated condition in which . . these negroes were left at the [widow's] decease . . and in the turmoil of the late war, the appointment of a receiver was probably necessary . . entitled to reasonable compensation . . out of the earnings of the negroes. . . [IV.] [206] by the change in the letter and policy of our laws [February 22, 1865], they became entitled to receive . . the fund . . without the necessity of going to Liberia" [Andrews, J.]

Wiseman v. Russey, 7 Coldwell 233, December 1869. [234] "Complainants allege [in 1867], that about the first of January, 1863, they hired . . five negroes . . for the year 1863, . . gave their note for $750; 'that the contract . . was made with a view to a payment in Confederate money, . . then much depreciated, . . very little, [or no other money,] in circulation . . The hire . . was . . double the value . . in any good currency.' . . stipulated that they were to give up the negroes if called for at any time, . . This was for the purpose of removing the negroes in the event that kind of property should be further jeopardized by the advance of the Federal troops. The troops came, and two of the men went with them; the others remained, but were of very little service." Bill dismissed. Affirmed: [235] "It is . . upon its face, a contract to pay legal currency. . . [236] the hirer took all the risks of owner" [Hawkins, J.]

Wheless v. Espy, 7 Coldwell 237, December 1869. [240] "In 1833 she sold Melinda, and with the proceeds bought furniture."

Ketchum v. Dew, 7 Coldwell 532, April 1870. [534] "September, 1859, Leonidas [Ketchum] . . bought these [five] negroes from [his aunt] Mrs. Dew. . . [535] he agrees to pay . . $5,100 . . January, 1862; and also . . $600, as interest [on each subsequent 1st of January, including the 1st of January, 1862.] . . Mrs. Dew lived at Philadelphia, . . [537] These were family negroes. . . He had had possession [in Memphis] . . for some time before his purchase, hiring them out, and controling [*sic*] them for Mrs. Dew;" [535] "Leonidas, . . after this sale was . . agreed upon, took one of the negroes—a boy, named Isham—to New Orleans, and placed him in a negro mart for sale; . . he died from . . an overdose of laudanum. . . [538] $2,000 was included in the note as his price, . . [539] Leonidas had insured Isham, . . [540] It is alleged that the insurance company refused to pay because Isham committed suicide. . . The Chancellor . . disallowed the $600 interest per annum, and decreed that defendant's debt be reduced to $5,100, . . with interest" from September 1, 1859. Affirmed.

Morgan v. Pope, 7 Coldwell 541, April 1870. Pope made his will in January 1863, and died in March 1865. The will directs [542] "that all his estate . . be sold . . but that the executors might reserve . . two favorite house servants; and each of his sons might also select and receive one . . [544] At the breaking out of the war . . the testator was

the owner of . . some seventy or eighty slaves, worth about $60,000. During the progress of the war, and before the date of the will, slave property had decreased in value, and at the date of the will slaves were not worth more than one-fourth their value at the breaking out of the war. Before the date of the will, a portion of the slaves . . amounting . . to about one-fourth of the value of the entire lot, had abandoned his services; and . . at the date of the will the testator regarded . . slavery as virtually abolished. In 1863, he said if he could secure two crops of cotton at the then existing prices, the negroes might go, and he would be satisfied. He did secure the crops of 1863 and of 1864, and sold them at greatly enhanced prices. . . [545] At the breaking out of the war, the testator was the owner of . . real estate in and near . . Memphis" "In consequence of the war, [such property] . . was worth [in October, 1866,] from 75 to 100 per cent. more than it was before the war. . . the testator's whole estate, in 1866, was worth as much, or within ten or fifteen thousand dollars of as much, as his whole estate, including the slaves, was worth in April, 1861, and about fifty thousand dollars more than his estate was worth at the date of the will, leaving the slaves out"

State v. Mosely, 7 Coldwell 576, April 1870. In 1852 or 1853 [579] "the deputy [sheriff] . . went to the house of . . Turner, . . and read to him the injunction which accompanied the attachment. The slaves were present, on the plantation, and a list of their names was obtained, . . [580] During the night the slaves escaped, and they were never recovered."

Marshall v. Dodson, 1 Heiskell 95, September 1870. On December 2, 1862, a slave was sold for $1025.

Clevenger v. Clevenger, 1 Heiskell 104, September 1870. "impracticable to divide the slaves, . . directed, by decree at March Term, 1861, to be sold . . most of the slaves were purchased by the distributees. One . . at . . $1,100, one . . for $1,005, and one . . for $889. . . Clerk and Master of . . Court, . . and the administrator . . [106] announced that when the notes fell due [in twelve months], they would receive payment in whatever was the currency then in use."

Witt v. Haun, 1 Heiskell 160, September 1870. The plaintiff, in the spring of 1864, [161] "applied to Col. Giltner, then in command of the Confederate forces, to send a scout for the purpose of breaking up a band of forty or fifty white men and negroes, ('bush-whackers,' . .) who . . were supposed to be the persons who had pillaged the mill."

Cochreham v. Kirkpatrick, 1 Heiskell 327, September 1870. William Smith's will, executed July, 1859: [329] "that my black girl, Eliza, be free at my death, . . and that she is to have the privilege of living on the land that I have given to my son . . or living with any of the connection, as the case may be." Codicil, executed September 1859: "that my black girl . . be not free until the death of my wife." The widow is still living. The son died after the death of the testator, and [329] "his interest in the land was sold to pay his debts, and bought by . . Kirk-

patrick, who . . brought an action of unlawful detainer against the complainants [Eliza and her husband];" who filed a bill to enjoin the suit. Bill dismissed.

Decree affirmed: "It does not appear that . . Eliza, ever obtained . . [330] the assent of the State to her emancipation. It was manifestly the intention of the testator that she should remain in the State, and the bequest of freedom, on this condition, was . . void,[1] . . The privilege of living upon the land was void, . . contrary to the policy of the State at the date of the will, and . . death of the testator, . . Article 13 of the Constitution of the United States, and later provisions in the Constitution of Tennessee . . could [not] so operate as to vest an interest in the land, . . contrary to . . the laws and policy of the State, existing . . when [the will] . . took effect." [Nelson, J.]

Burts v. Evans, 1 Heiskell 420, September 1870. In 1860 a negro man was sold for $1200.

Lynch v. Burts, 1 Heiskell 600, September 1870. George Squibb's will, executed in October 1852: "that my negro girl, Jennie, shall, at the decease of my wife, be set free, and sent to Liberia or some other suitable place; and to meet the expense . . [601] I . . direct my executors to set apart . . five hundred dollars . . to inure to the benefit of . . Jennie." "The bill alleges that Jennie . . had abandoned her mistress in September, 1863, claiming to be free under the public events of the late civil war; . . [602] The answer denies the abandonment, and avers that . . about the latter part of the war, . . her . . mistress . . commanded her to leave the place;"

Held: [605] "The will had invested her with the right of freedom, . . its enjoyment was postponed, but the right to the pecuniary bounty was a part of the bequest of freedom,"

Rucker v. Moore, 1 Heiskell 726, September 1870. On April 3, 1862, [733] "boy Westley, girls Harriet, Letta and Amanda, and two children" were sold for partition, for $3,590.60, payable in six months. [730] "The sale is ordered upon the report of the Clerk, based upon . . [insufficient] testimony . . By the decree, no . . advertisement of the time of sale is directed, . . [731] [other] errors and omissions," Held: "the sale . . was absolutely void."

Kissom v. Nelson, 2 Heiskell 4, Dcember 1870. [9] "a deed indented [in 1859], . . to retain the legal title [to fifty acres] for the benefit of himself and wife and his old slave, Chloe,"

McLean v. Houston, 2 Heiskell 37, December 1870. In February 1863 a slave was sold for $1025, payable in twelve months. In 1864 [39] "he had gone off, and was, practically, free,"

Snell v. Elam, 2 Heiskell 82, December 1870. Valuation of estate, November 17, 1861 (?): [85] "Charles, $1,000; Amy, $800; Davy, $1000; Tom, $800; Margaret, $600; Ruth, $600; John, $450."

[1] Code, sects. 2692-2710.

Wynne v. Warren, 2 Heiskell 118, December 1870. [120] "1860, the defendants reported that they had found it impracticable to exchange . . negro boy . . for a [young] woman or woman and child [for the advantage of both the life estate and the estate in remainder], and that they had sold the negro boy for one thousand dollars, his full value, . . [121] due the 25th December, 1859, . . payment of the purchase money and interest . . 10th of January, 1861, . . [123] The price of negroes, in the meantime, was rapidly rising; there were no more sales known to them. That, in February, 1862, they found a woman for sale, . . but the complainant . . did not like her;"

Wiseman v. Bean, 2 Heiskell 390, January 1871. [391] "On the 2nd of April, 1860, . . Wakefield bought a slave at a sale made by the Clerk and Master . . for $1,300. The note not . . paid at maturity, . . [394] Arnold . . sold her at public sale, . . as a deputy Sheriff, when she was bid off . . at $901."

Lester v. Vick, 2 Heiskell 476, January 1871. Jemima Carr's will, 1857: [477] "I direct that my executor sell my two slaves, Amanda and Alexander, which he may do at private sale, in order to secure . . [478] good masters. I prefer that they should select their masters, provided they select men that will buy them at a fair price."

Officer v. Sims, 2 Heiskell 501, January 1871. [503] "Twelve months after date, we promise to pay . . five hundred and seventy-five dollars, . . for a negro girl, . . But we . . reserve a lien . . for the purpose of securing the payment . . at which time we agree to make a bill of sale . . This 9th of January, 1862." "signed only by the purchasers, who are the defendants . . [504] refused to pay" Suit was instituted in 1866.

Held: [510] "The subsequent changes in the organic law,[2] by which that species of property was destroyed, does not relieve the purchaser of the obligation to pay"

Johnson v. Johnson, 2 Heiskell 521, January 1871. [523] "In December, 1862, . . [a bill was] filed . . for the purpose of procuring the sale of . . slaves, . . that the proceeds might be partitioned . . A decree of sale was made, . . [524] three of the distributees, purchased four . . at . . $3,580, paying $179 in cash, and giving their notes, . . the report of sale was never confirmed [by the court]. . . [525] 'about the last of July, 1863, when Bragg's forces were leaving . . Tennessee, and the Federals advancing, John A. Johnson [administrator and one of the purchasing distributees], of his own will, and by the . . advice of C. M. Johnson, one of the joint purchasers [and a distributee] . . removed [the negroes] . . to . . Alabama, and that in 1865, after the . . close of the war, said negroes were brought back.'"

Held: the loss of the slaves falls on all the distributees.[2] John A. Johnson and C. M. Johnson are responsible for reasonable hire for the slaves till their emancipation.

[1] Tenn. Constitution, Feb. 22, 1865.
[2] Act of 1827, ch. 61, and Code, sect. 2246.

Hudson v. King, 2 Heiskell 560, January 1871. On February 18, 1862, the executor sold [562] "on a credit of one year . . [563] the man, Green, for $1,050, . . and Anthony for $950, . . [564] held by the purchasers . . until . . emancipation."

Held: [575] "The purchasers will be required to pay"

Matthews v. Thompson, 2 Heiskell 588, January 1871. [589] "the . . slaves belonging to his estate were sold, pursuant to a decree, . . September Term, 1859. . . sales . . confirmed by a decree . . May, 1860, when a further order was made, directing a sale of . . four slaves, who had not been sold. The notes . . amounted to $20,669.50."

Killebrew v. Murphy, 3 Heiskell 546, February 1871. [560] "that the slaves were impressed by military authority, or absconded of their own volition, or . . all ultimately lost by the results of the war."

Andrews v. Page, 3 Heiskell 653, February 1871. Andrews [657] "was the owner of . . Bill, Brit and Dilly, in . . 1857; that he sold them to Harry Page, the husband and father, for $3,200; . . in 1859 . . about one-half . . had been paid;" [656] "left the country in consequence of great political excitement and because of an apprehension that he and his family would be reduced to slavery, . . first went to Cincinnati, but afterwards . . to . . Nashville . . [657] killed [there] . . in a saw mill, in 1864; that he and Dilly had lived together as husband and wife for fifteen years," [654] "this attachment bill charging that there was a balance due of $1,550, was filed [in 1861.] . . [656] he owned three tracts of land, of six, seven and one hundred and ninety-six acres . . and was the equitable owner of about one hundred and twelve acres" "1866, an answer and cross bill was filed in the names of Dilly Page . . and others, . . alleged that . . [657] Dilly is entitled to dower;"

Held: [660] "it was generally held, in the slaveholding States, that the marriage of slaves was utterly . . void; . . But we are not aware that this doctrine ever was distinctly and explicitly recognized in this State. Before the . . unconstitutional, and impertinent interference, of . . intermedlers [*sic*] in other States . . rendered it necessary for the State to guard against the effect of their incendiary publications, and to tighten the bonds of slavery by defensive legislation, against . . untiring efforts to produce insurrection, the uniform course of decision in this State was shaped with a view to ameliorate the condition of the slave, . . [666] there were circumstances under which the courts of this State recognized the relation of husband and wife . . as existing among slaves, . . and we hold, that a marriage between slaves, with the assent of their owners, whether contracted in common law form, or celebrated under the statute,[1] always was a valid marriage in this State, and that the issue . . were not illegitimates. . . not . . followed by all the legal consequences, resulting from the marriage of white persons. . . [670] when Dilly . . [was] purchased by her husband, she acquired an inchoate right to freedom, . . needed nothing to perfect it but the assent of the State;

[1] The marriage act of 1778, ch. 7. Car. and Nich. 450.

. . given by general emancipation; . . her rights as a free woman thereby relate back to the date of her purchase, . . there is no difference between her right to dower and the right provided by the general laws;" [Nelson, J.]

Puryear v. Edmondson, 4 Heiskell 43, March 1871. [47] "The pervading idea of the will [of Samuel Winstead], . . executed several years before the late civil war, seems to have been the emancipation of the large number of slaves . . and their transportation to Liberia, for which purpose the will creates an ample fund"

Robertson v. Simmons, 4 Heiskell 135, March 1871. [138] "During the years 1861 and 1862, a large quantity of cotton was raised, by the slaves on the plantation,"

Barber v. Williams, 4 Heiskell 522, May 1871. [523] "In 1862 or 1863, plaintiff sold . . a boy . . and a girl . . for one thousand six hundred dollars in gold."

Taylor v. McDaniel, 4 Heiskell 545, May 1871. [546] "1860, . . allotted . . a man . . estimated at nine hundred dollars. . . The bill alleges that the slave . . was diseased . . and died . . 1862,"

Jameson v. McCoy, 5 Heiskell 108, May 1871. [109] "About . . 1842 . . Ward . . of North Carolina, determined to remove to Tennessee. . . To avoid separating Kissee and her children from Caesar [her husband], Ward purchased him, and . . agreed with Caesar, that, 'after they reached Tennessee, he should have his time by repaying the amount paid for him.' . . About a year after they settled in Dyer county Caesar . . was ready to pay for himself. Ward received the money, and 'let Caesar set up for himself.' . . Ward leased . . land . . and gave it up to Caesar to cultivate for his own benefit. From this time Caesar ceased to have a master, . . He was industrious, frugal and energetic . . [110] cautious and shrewd . . and soon gathered around him a competency . . built himself a house, and then Ward allowed his wife . . to go and live with her husband. Soon after Caesar bought his wife . . with the view of securing her freedom. After a few years . . Caesar heard . . that, if his old master should die, he might again be returned to slavery by one of his sons. . . requested him [Ward] to make a bill of sale . . to . . Warren . . who would stand for him as his protector and trustee. . . a common mode by which the rigid laws against increasing the number of free persons of color . . by emancipation was evaded. . . the arrangement was carried out . . Caesar was virtually free, except that the State had not given her consent. . . McCoy . . succeeded in so completely winning the confidence of Caesar, that he induced him to apply to Warren to transfer the guardianship . . to McCoy. . . [111] Ward and Warren yielded, . . McCoy removed to a different part of Dyer county, . . carried with him Caesar and his wife, and all of their stock, consisting of horses, hogs, etc.; their farming implements, household furniture, provisions, etc. . . about a year [after] . . McCoy commenced . . treating him as a slave . . upon Caesar's manifesting too much dissatisfaction with the restraint imposed . . McCoy asserted the right to

inflict corporal punishment . . whereupon Caesar ran away and returned to his old master . . [112] McCoy . . assured Warren that if Caesar would return and make some little acknowledgments, he might gather up his property and return to his old neighborhood. . . Caesar . . agreed to go back . . for his wife and property. . . immediately seized and committed to the jail . . as a runaway . . McCoy went to a blacksmith . . Vaughn, to have a pair of handcuffs made . . Vaughn proposed to buy him, having no knowledge of his claim to freedom. The trade was made on the condition that he should be sent South and sold. Vaughn paid McCoy $500 for Caesar and his wife, and . . carried them to Memphis, . . sold to Forrest and Hill, who kept a slave mart . . In a short time they were sold to C. R. Jameson in Mississippi, . . Before selling them to Vaughn, McCoy had made such threats . . in the event they disclosed their claims to freedom, that they remained several years with Jameson before they ventured to allude to their true condition. . . [113] Jameson wrote to Ward, . . received a letter, fully confirming . . He immediately set them at liberty, and they returned . . but in a short time they concluded to . . live with Jameson, . . he removed to Arkansas, the old negroes going with him. Caesar . . died . . about 1860, and in 1861 Kissee died in Memphis. They left several children . . Jameson came to Dyer county, took out letters of administration"

Held: I. [120] "after . . Ward . . allowed him *to set up for himself* . . [121] Caesar . . ceased to be a slave, but he was still not a freeman, yet he was capable of holding property. . . So long as the State did not object, his right to remain and to exercise all the privileges . . attached to his new . . condition, could be interfered with by no one. . . He could not sue and be sued, but he could . . possess the fruits of his . . earnings, . . the policy of the law having since so changed as to invest his children with the rights of freemen, . . the County Court . . had jurisdiction to grant administration" II. McCoy must be charged [114] "with the $500 received of Vaughn and interest, with the value of the personal property left by Caesar at McCoy's, and with the services of Caesar and Kissee from the time they went to McCoy's . . [122] about . . August, 1850, until about August or September, 1856, when they were released" by Jameson. [Nicholson, C. J.]

Hardin v. Williams, 5 Heiskell 385, June 1871. "note for $200, of date the 1st January, 1861, due twelve months after . . for the hire of a negro slave,"

Crisp v. Miller, 5 Heiskell 697, June 1871. [698] "May, 1861, Miller gave . . a negro man slave as a pledge . . to secure the payment . . with power to sell . . for not less than $1,100,"

Queener v. Trew, 6 Heiskell 59, September 1871. [65] "The Clerk reported . . at the November Sessions, 1862, . . a negro boy . . [sold] for $1,600; . . [another] for $900; and a negro woman . . for $108."

Sweat v. Rogers, 6 Heiskell 117, September 1871. [118] "action . . commenced . . in February, 1861, by Rogers, . . The first two [counts] allege that the [two] slaves were of bad character for stealing . . and

that Sweat . . their owner, was cognizant . . and did not prevent them . . The third count alleges that the slaves, with the . . instigation of [Sweat,] . . set fire to the store-house of [Rogers,] . . that those chattels . . not so consumed the . . slaves did steal"

Held: [119] "the first two counts do not contain the necessary allegations to make the defendant liable . . but the allegation in the third count . . was sufficient,"

Young v. Cavitt, 7 Heiskell 18, December 1871. Will of Jacob Young, 1858: [20] "that my three negro boys . . have the right to choose their masters, and that he pay whatever he pleases, and if they become dissatisfied, that they have the right to choose again, by the last master paying to the first, whatever he paid, and so on; and I request my executors to see to this, as they have been faithful servants to me, and I desire that they shall be well treated." The administrator with the will annexed "hired [them] out . . from 1859 to 1864, receiving annually for each from $100 to $150. He desired to hire them out for 1864, but they had become apprized of the provision . . in the will, and selected their masters for that year, who tendered each to the administrator one dollar. . . refused . . negroes were not hired out for that year. . . [24] the three negroes . . had served the testator long and faithfully . . his confidence in them [was] as great, as if they had been his own children. . . [25] When informed by an attorney, . . that they could not be made free without leaving the country, . . he shed tears. . . asked if he could not fix it so that they might remain nominally slaves, but really be free, as the poor fellows did not want to be sent off."

Held: [27] "it was the . . purpose of the testator that the masters . . were to own them as trustees, and that the negroes were to be the beneficiaries, with the substantial rights of free men. . . [But they] were kept in absolute slavery [by the administrator], being hired out . . [hire amounting to] several thousand dollars . . [31] No others than themselves have an equitable claim to the fund." [30] "there always has been an intermediate state between absolute slavery and absolute freedom, recognized by our Courts, in which . . the inchoate legal right to freedom, and the vested equitable right to its benefits, have been . . capable of being enforced . . The administrator . . had no right to refuse to execute the trust . . as inconsistent with public policy; this was a question for the State to determine. [Nicholson, C. J.]

Pointer v. Smith, 7 Heiskell 137, January 1872. [138] "in 1863 the negroes of Pointer had been hired to Noble and Bro. in Alabama for that year, . . letter . . by Pointer to . . Smith, . . January 27th, 1864. . . [139] while Pointer was within the Federal lines of occupation, at his home in Williamson county; . . Smith had become a member . . of Noble, Bro. and Co., and as the negroes were in their employ at their furnace, Pointer . . [was] much gratified . . as Smith was his 'friend and neighbor, . . I place my negroes in your hands . . Watch the movements, and run my negroes; hire them out, sell them, and invest . . as your discretion may dictate, for I would not give nine dollars a dozen for all the negroes in Tennessee as they are.' He then goes on to give some

advice to the negroes themselves by way of preventing a desire . . [140] to run away; and tells Smith to give them 'whatever they want in reason, and charge all *extras* to me. . . I do not want my negroes sold except in an extreme case,' but advises they be run whenever necessary, and all expenses and travel charged to him, . . Smith got the negroes from Noble Bros., . . and hired them to Claybough and Co., [who had an iron furnace] at Talledega, Alabama, about last of February . . 1864, for . . $4,500 [Confederate money], . . but afterwards, owing perhaps to failure of Claybough and Co. to clothe them, it was agreed they should pay $3,000 [Confederate money], or about this sum, . . to Smith, and he should clothe them. . . [154] Confederate money, [was] then worth seven to one, part of the time less;"

Frierson v. General Assembly of the Presbyterian Church, 7 Heiskell 683, March 1872. William E. Kennedy [687] "died on the 17th of December, 1863, . . having before this time emancipated the larger portion of his slaves, sending them to Liberia, through the agency of the American Colonization Society." Will: [688] "one thousand dollars to the Rev. W. McLane and the Rev. R. R. Gurley, Secretaries of the American Colonization Society in Washington, D. C., and their successors, to be . . used in promoting the objects . . of said society in colonizing negroes in Liberia,"

Galloway v. Myers, 7 Heiskell 709, March 1872. In December 1860 an execution was levied on [710] "Carter, aged 12 years, value $800; Nimrod, aged 7 years, value $400; and Jim, aged 4 years, value $300; . . to be sold at the market-house"

Logan v. Coal Co., 9 Heiskell 689, April 1872. "the defendant, without the plaintiff's permission, had employed the slave in unloading a coal barge in the Mississippi river; . . the slave fell overboard and was drowned."

Taylor v. Mayhew, 11 Heiskell 596, September 1872. [597] "a bond [executed in Georgia] . . for the payment of $300. . . given for the hire of two negroes, . . February 5, 1863;"

Held: [598] "the President had no power to free the slaves in the southern States by his proclamation [of January 1, 1863]."

Lewis v. Woodfolk, 2 Baxter 25, December 1872. [27] "action . . upon . . promissory notes executed by the defendant . . January, 1860, . . [29] two plantations [in Louisiana] were . . in operation for the benefit of the three owners, . . [who] resided in Virginia. . . sold for partition . . [30] At the sale of the Ashton estate the land, slaves, [ninety-eight in number,] stock and provisions were all sold in bulk, at public auction, . . [35] 'The negroes were drawn up in a line, and were carefully inspected by Mr. Woodfolk, . . All the defects . . were carefully explained' . . the overseer [stated] . . 'He looked at the negroes many times [before the time of sale]. . . talked with them about what they could do, about their disposition to be bought by him;' . . [38] The defendant read to the jury the clause of the Constitution of

Louisiana of 1864, abolishing slavery . . and . . the Constitution of 1868, . . 'Contracts for the sale of persons . . shall not be enforced'"

Held: [53] "the Courts of this State [cannot] tolerate a defence . . based on a provision of the Constitution of Louisiana, which is repugnant to the organic law of the land." [Sneed, J.]

Topp v. White, 12 Heiskell 165, April 1873. [169] "contract, . . February, 1860, . . Davis . . sold . . slaves . . now on . . plantation [in Mississippi]; . . (naming forty-eight). . . [170] Jenny was burned on her leg, which injures her to some extent." "that five of the slaves . . are valued at nothing . . and that . . Davis is at liberty to retain them if he will." It was alleged [204] "That lands in the Mississippi bottom were . . readily had, but was often difficult to find parties who would dispose of their slaves, and when plantations were offered for sale with the slaves upon them, the slaves almost universally constituted the chief inducement . . to buy the property."

Hartfield v. Simmons, 12 Heiskell 253, April 1873. [254] "in 1860, he . . conveyed to his mother a little negro of two years of age for . . $150, paid . . in care and attention bestowed on other slaves of the vendor;"

Gregory v. Hasbrook, 1 Tenn. Ch. 218, April 1873. [219] "hired to him for . . 1862, a negro woman . . for $75,"

Seay v. Ferguson, 1 Tenn. Ch. 287, [April ?] 1873. [287] "1858, . . sold . . a negro woman and child for $1,200,"

Cross v. Bloomer, 6 Baxter 74, September 1873. Will, 1850: [75] "hire out his negro man . . for ten years for the maintenance of his widow and two minor children,"

Embry v. Morrison, 1 Tenn. Ch. 434, October 1873. [435] "November, 1864, the defendant sold to the complainant, then a slave . . of . . Embry, a house and lot in Nashville, . . [for] $2,800, of which $1,000 were paid in cash by the complainant at the time, and the residue secured by his four . . notes . . at 6, 12, 18 and 24 months, . . The complainant afterwards paid the first of these notes, and made three payments on the second . . in all . . $190, . . 1867, this bill was filed to be relieved from this contract"

Held: "a slave has no power to make a contract, unless . . for his freedom, . . The contract of sale was . . absolutely void. . . [436] But . . if the master . . recognize the right of the slave to . . property . . and the slave is afterwards emancipated, his freedom by relation will be held to extend to the time when the right first accrued.[1] . . The complainant is, therefore, entitled to have his notes cancelled . . and to recover the purchase-money paid by him, . . also . . entitled to the value of any permanent improvements . . and to a credit for taxes and necessary repairs paid, and must account for rent . . also pay the costs . . heretofore accrued." [Cooper, Ch.]

[1] See Lewis *v.* Simonton, p. 534, *supra.*

Work v. Walker, 1 Tenn. Ch. 487, October 1873. "all her property . . consisting principally of slaves, . . [488] which for many years, and up to the late war, brought in a handsome income,"

Ensley v. U. S., 9 Ct. Cl. 11, October 1873. [12] "Early in 1864, the claimant executed, at Memphis, a power of attorney to . . Dickman, a subject of Denmark, authorizing him to dispose of . . property . . in Mobile, . . Dickman obtained a passport . . passed through the lines [of the United States forces] . . to Mobile, prior to April, 1864, . . sold for $200,000, in 'confederate money,' certain negroes, . . and invested . . in cotton and turpentine,"

Odom v. Owen, 2 Baxter 446, December 1873. Odom's will [448] "provided that a . . negro woman . . should remain with his father . . and wait on his children, but if she would not do so peaceably, but became refractory, so that she could not be controlled without punishment, . . she was to be sold, . . the contingency having happened . . sold [1860 ?] . . for . . over $1,100."

Ott v. Smith, 3 Baxter 135, December 1873. [136] "given [December 1861], by way of advancements, to my daughter, . . [137] a negro woman, purchased for her at $1,160, and a negro girl at $700,"

DeBerry v. Hurt, 7 Baxter 390, April 1874. Will of Allen DeBerry, 1847: [391] "In consideration of Donelson being my body servant, and his good behavior, I wish him to be set free, and if the laws of the State will not allow it . . that he may be permitted to go to a State where he will be free, . . I also give to my executor . . five hundred dollars, in trust, to be given to . . Donelson when he may be set free, or go off to act for himself, or to do with it as the circumstances . . of . . Donelson may seem most prudent" The executor [392] "provided him with fifteen or twenty acres of good land, and furnished him the means to build a house thereon; . . Donelson was never formally freed, but was allowed . . to live to himself and enjoy the fruits of his own labor until 1859, when he died." Held: Donelson's administratrix [393] "may maintain a suit for the recovery of any balance [of the legacy] . . which may be due:"

Robinson v. Harrison, 2 Tenn. Ch. 11, April 1874. Will of the Hon. John Catron, who died in May 1865: [12] "for the use of his negro man, Henry, 'two thousand dollars in stock . . the interest . . to be drawn by Mrs. Catron . . during her life-time,' . . third codicil . . the stock has since increased to . . nominally . . $5,802.50, . . 'I hereby give . . all [for the use of Henry] . . my executors . . to pay the proceeds of said two thousand dollars over to Henry as . . received. The balance of the proceeds . . to be received by my wife during her life-time, and is to go to Henry at his mistress' death; and if he be then dead, Henry's wife, Pauline, is to be his successor, . . and if she fails to dispose of the same, then the stock, at Pauline's death, is given to her daughter, Mary, absolutely.' Henry died in 1866,"

Long v. Granberry, 2 Tenn. Ch. 85, July 1874. [88] "The facts presented . . by the complainants . . are . . [89] That, only a few hours before his death [in 1841], . . Boddie called for his boy-servant, Washington . . in whom for years he had reposed confidence, handed to him his will, with instructions to carry it to . . Dawson, . . but the same was taken from him by [Boddie's sister] . . and has never since been forthcoming. That Washington, immediately after the death of Boddie, was caused by said [sister] . . to be arrested, sent to jail, placed in irons, sent to south Alabama, and sold, on account of his knowledge of the disposition of the will."

Brown v. Dortch, 12 Heiskell 740, December 1874. [744] "land [belonging to the estate of Aaron V. Brown, Postmaster General] in . . Mississippi [was sold] . . in January, 1860, . . The negroes on this place were then removed to the farm in . . Arkansas. It was then found impossible to employ the slaves profitably . . in connection with those already on the place; . . property . . divided by commissioners . . [745] two shares of negroes combined . . [746] were of the value of $44,850."

Estill v. Deckerd, 4 Baxter 497, December 1874. Will of Wallis Estill, who died in 1835: [500] "after three years from my death my executor shall remove my slaves to my . . land on Crow Creek and lay off one hundred and fifty acres thereof . . and, if he thinks proper, fifty acres more, . . in trust . . My . . negroes are to reside and labor on said land, under superintendence and control of my executor (such farm paying annually to my estate such sum as my executor, with the advice of my representatives, may prescribe; the balance to be applied to the maintenance, etc., of said slaves and their offspring), for twenty years," At the end of that time "slaves and their offspring are to be emancipated, . . land to be divided into lots, as my executor may think just, and assigned to the different families of negroes and their use forever—the title . . to remain in my executor in trust for them. . . [501] for malconduct . . they may forfeit their right to freedom, and in such case they are ordered . . to be sold," Codicil: "Taking into consideration the moral and religious benefit of my slaves . . my will is that the lands [on Crow Creek] . . be sold and the proceeds applied to the purchase of a tract . . on this side of the mountain, where my executor can the better have the oversight and control . . [502] which tract . . is to be subject to all of the [foregoing] provisions." In 1849 Kincaid, "a party interested under the will of . . Estill, . . along with others, . . [503] prayed for a sale of said slaves on account of alleged misconduct . . the Court seems to have refused . . Deckerd, having purchased a number of interests in the estate . . applies to the Court [before September 12, 1853] . . to have said slaves sold as having forfeited their right to freedom by misconduct. . . [504] an order was made . . slaves . . not having been made parties. The Court . . is said, however, to have remarked that the slaves would have a right to . . contest . . On the 12th of September, the slaves . . by Garrett Estill, . .

next friend, filed . . injunction bill, . . 1855, a decree . . enjoining the sale . . and declaring them emancipated upon complying with the Acts . . [507] appointed two persons trustees to hire them out to raise the means to send them to Liberia, and, for ought that appears, they were still under the operation of the decree till 1860, when, upon a bill filed by Samuel Estill and others, claiming their services, they were again placed under control of the Chancery Court . . until . . in effect, freed by . . the civil war. . . December, 1865, this bill was filed by Harry and others . . alleging . . that they were entitled to two hundred acres . . of the Crow Hill farm;"

Held: [518] "Upon the sale of the lands, complainants will be given the option to receive the proceeds in money, or to have the same vested [*sic*] in other lands,"

Kimbrough v. Kimbrough, 1 Tenn. Cas. 305, December 1874. [306] "The will was made in 1858, and provides that complainant [his widow] should have . . as many of his negroes and so much of his stock . . as she wanted, during her life, and at her death to go to his children." The testator died in 1863. "she elected to take . . all the stock on hand, the negroes having been freed by the events of the war."

Pearson v. State, 1 Tenn. Cas. 311, December 1874. [314] "the horse rode by the deceased [in January 1865] had a brand of U. S. upon him. . . he had purchased the horse, which seems to have been an old, wornout animal, from a negro for $12."

Carter v. Montgomery, 2 Tenn. Ch. 216, April 1875. [217] "Dinah Carter . . was a free woman of color, and the keeper of an assignation house, and seems to have been . . implicated [in 1862] in bringing about the illicit cohabitation of Bruner and Myra [both white]. . . 1864, the Hendersons conveyed the land . . to . . Dinah Carter . . The money . . was paid by Bruner. . . Dinah Carter . . conveyed the land . . to Myra, . . at the instance of Bruner. . . March, 1865, she intermarried . . with . . James M. Garrett. . . September, 1865, filed a bill against her husband for divorce, on the ground of cruel treatment. . . [Two days later,] on her refusal [to return to him], he killed her . . committed to jail . . [218] released upon bond . . never returned. . . [225] James Garrett, a white man, removed from North Carolina to . . this state early in the century, and died about 1833. By his will he emancipated . . Sarah and Esther, of whom he was the reputed father, dividing between them the farm on which he resided, . . Sarah . . had several children, without ever being married, of whom Paralee is one. Paralee . . has had two illegitimate children, of whom . . James M. Garrett is the eldest. . . [226] Paralee, was . . the daughter of a white man. . . witness . . says [the mother of Sarah, 'whom he saw a dozen times'] . . was . . a full black negro [slave of James Garrett]. . . [227] On the other side . . Paralee . . states, as upon information derived from Sarah, Esther, and other members of the family, that Sarah's mother was a mulatto . . [231] Five witnesses describe [Sarah] . . as a dark-skinned mulatto, with Kinky hair, flat nose, and thick lips."

Held: [230] "The hearsay evidence . . as to the color of Sarah's mother, is . . inadmissible, . . It must be conceded, then that . . [she] was a full-blooded negress, or, at any rate—to put it most favorably for those who claim under Garrett—there is no evidence on the point. . . [231] My opinion, from the direct testimony, is that Sarah was only one remove from the negro. . . I am clearly of opinion that James M. Garrett is in the third degree of mixed blood, and that the marriage between him and Myra was void."[1] Myra being illegitimate, and her mother having died, her mother's children are entitled to the land in controversy. [Cooper, Ch.]

[1] Act of 1822, ch. 19, sect. 1. Code of 1873, sect. 2437.

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